

MARITIME UNION OF AUSTRALIA (MUA)

**SUBMISSION TO SENATE STANDING
COMMITTEE ON ECONOMICS**

**INQUIRY INTO THE TAX AND
SUPERANNUATION LAWS AMENDMENT
(2014 MEASURES NO. 5) BILL 2014**

13 OCTOBER 2014

1. Introduction

- 1.1 The Maritime Union of Australia (MUA) welcomes the opportunity to make a submission to the Senate Standing Committee Inquiry into the Tax and Superannuation Laws Amendment (2014 Measures No. 5) Bill 2014 that was referred on 25 September for report on 28 October 2014.
- 1.2 The union's submission will focus only on the Seafarer Tax Offset aspect of the Bill.

2. The Maritime Union of Australia (MUA)

- 2.1 The Maritime Union of Australia (MUA) represents over 15,000 workers in the shipping, stevedoring, port services, offshore oil and gas and diving sectors of the Australian maritime industry.
- 2.2 Members of the MUA work in a range of occupations across all facets of the maritime sector including on coastal cargo vessels (dry bulk cargo, liquid bulk cargo, refrigerated cargo, project cargo, container cargo, general cargo) as well as passenger vessels, towage vessels, salvage vessels, dredges, ferries, cruise ships, recreational dive tourism vessels and in stevedoring and ports. In the offshore oil and gas industry, MUA members work in a variety of occupations on vessels which support offshore oil and gas exploration e.g. on drilling rigs, seismic vessels; in offshore oil and gas construction projects including construction barges, pipe-layers, cable-layers, rock-dumpers, dredges, accommodation vessels, support vessels; and during offshore oil and gas production, on Floating Production Storage and Offtake Tankers (FPSOs), FSOs and support vessels. MUA members work on LNG tankers engaged in international Liquefied Natural Gas (LNG) transportation. The MUA is a member of the International Transport Workers Federation (ITF) which is the peak global union federation for over 700 unions representing over 4.5 M transport and logistics workers worldwide.
- 2.3 The MUA was an important stakeholder in development of the 2012 national shipping reforms, including the shipping tax incentives and has been an active participant in implementation of the new shipping legislation since 1 July 2012.

3. Introduction

- 3.1 The Seafarer Tax Offset is one of an integrated package of taxation measures which accompanied the coastal ship licensing system and establishment of an Australian International Shipping Register (AIST), that together made up the shipping reform package (Stronger Shipping for a Stronger Economy) that commenced on 1 July 2012. The other 3 taxation measures are:
 - An income tax exemption (ITE) for operators of Australian registered eligible vessels on qualifying shipping income;
 - Accelerated Depreciation and rollover relief for owners of Australian registered eligible vessels; and

- An exemption from royalty withholding tax for foreign owners of eligible vessels leased under a bareboat or demise charter to an Australian operator.

3.2 These three measures remain in place.

4. The MUA recommendation to the Senate Stranding Committee on Economics

- 4.1 The MUA strongly urges the Committee to recommend to the Parliament that it agree to amend the Tax and Superannuation Laws Amendment (2014 Measures No. 5) Bill 2014 by deleting Schedule 2 – Abolishing the Seafarer Tax Offset.
- 4.2 The union puts this view because we believe the Coalition Government has mis-understood the effect and impact of this taxation measure on the Australian shipping industry.
- 4.3 We are concerned that the Treasury, in recommending savings measures to the Treasurer to help meet the Government's overall Budget objectives, has failed to adequately consult either the policy Department responsible for implementation of national shipping policy, the Department of Infrastructure and Regional Development, nor the industry, in particular those tax entities (employers of seafarers) that have accessed the Seafarer Tax Offset.
- 4.4 In failing to adequately consult, the Treasury has incorrectly assumed, as outlined in the Explanatory Memorandum for the Bill, that the alleged low level of claims for the seafarer tax offset indicates that it has not achieved its policy intent and that it has therefore not been an effective stimulant for the employment of Australian seafarers on overseas voyages.
- 4.5 The Explanatory Memorandum says that since its introduction in 2012, the seafarer tax offset has been claimed annually by fewer than 20 taxpayers, in respect of, in total, around 250 employees.
- 4.6 The first point to be made is that access by approximately 20 taxpayers, if correct, represents a very high level of take-up from among eligible companies, contrary to the assertion made in the Explanatory Memorandum.
- 4.7 To be eligible for the Tax Offset, a company must employ Australian residents as a seafarer on a voyage on an eligible vessel to or from a location outside Australia. To be an eligible vessel, an entity must hold a certificate under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* in respect of the vessel. A certificate can be obtained where the vessel meets certain size requirements, is intended for travel on international waters and is registered on an Australian shipping register.
- 4.8 Since 1 July 2012, there are two Australian Shipping Registers, the Australian General Shipping Register (AGSR) (the new name for the longstanding Australian shipping Register) and a new Register, the

Australian International Shipping Register (AISR). Unfortunately, due to flaws in one of the other shipping taxation incentives introduced as part of the 2012 shipping reform package (the income tax exemption), no ships have been registered on the AISR to date. Shipowners have decided that the Australian income tax exemption provision does not compare favourably with the income tax exemptions available in foreign Registries, and so no owners have been prepared to switch ship registration to the AISR. We hope the Government will address that flaw in the income tax exemption, but that is a matter for consideration at another time.

- 4.9 Some shipowners whose ships prior to 1 July 2012 were not required to be registered on the AGSR (even though eligible to be so registered) have now registered their ships on that Register (e.g. ships previously engaged in intra-State voyages). However, very few, in any, of those ships are engaged in travel on international waters.
- 4.10 The point being made by explaining that background is that there are in fact very few shipowners (taxpayers) with ships on an Australian Register that are eligible to access the Seafarer Tax Offset.
- 4.11 That of course is the very reason why the former Government, having engaged in a wide ranging and comprehensive consultation process, decided to introduce a range of shipping taxation incentives – to increase the number of Australian shipowners and Australian ships – aimed at building a maritime cluster in Australia.
- 4.12 We believe the Committee should seek evidence from Treasury about the data sources used to report that the Seafarer Tax Offset has been claimed annually by fewer than 20 taxpayers.
- 4.13 An examination of the Government's most recently published ship data in *Australian Sea Freight 2012/13*, published in September 2014 by the Bureau of Infrastructure and Regional Economics (BITRE)¹ shows at Tables 5.8 (Ships in the major international trading fleet, 2012–13) and 5.9 (Ships in the major coastal trading fleet, 2012–13) that there were only 11 Australian Registered ships involved in international trading. While it is difficult to reconcile international trading as defined for Table 5.8 data with the eligibility for the Seafarer Tax Offset (the company must have engaged the seafarer for at least 91 days in the income year [approx. 25% of the income year] and the seafarer was on a voyage to or from a place outside Australia), we believe the data nevertheless demonstrates that there are very few eligible taxpayers that would be entitled to claim the Seafarer Tax Offset on behalf of their overseas voyaging seafarer employees.
- 4.14 Given that each international voyaging ship would engage approximately 34 seafarers (17 on a 2 crew system=34), 11 ships would employ approximately 374 seafarers, which is significantly higher than the figure referred to in the Explanatory Memorandum of 250 seafarers. If Treasury is correct and approximately 20 taxpayers accessed the Tax Offset, and

¹ Bureau of Infrastructure and Regional Economics, *Australian Sea Freight 2012/13*, September 2014 https://www.bitre.gov.au/publications/2014/files/asf_2012_13.pdf PP67-69

assuming each such taxpayer owned at least 1 ship, the number of seafarers involved would approximate 680 (20x34).

- 4.15 The data in the BITRE publication *Australian Sea Freight* needs to be compared to the Consolidated information on Certificates and Notices issued under the *Shipping Reform (Tax Incentives) Act 2012* published by the Department of Infrastructure and Regional Development.²
- 4.16 Departmental data shows that in both 2012/13 and 2013/14, four certificates were issued in relation to what the Department refers to as the Refundable Tax Offset. The Committee will note that the Explanatory Memorandum advises that to be eligible for the Tax Offset, the applying entity must hold a certificate for the vessel(s) on which the individual is engaged under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012*.
- 4.17 A comparison of the BITRE data on the number of Australian ships involved in international trading and the Department's data on Certificates issued shows that even if each of the 11 ships in international trading is owned by a different tax entity, 4 of the shipowners (taxpayers) of those 11 ships, or 36%, have accessed the Seafarer Tax Offset.
- 4.18 This suggests a very strong take up of the Seafarer Tax Offset in its initial 2 years of operation, contrary to the advice in the Explanatory Memorandum.
- 4.19 The second reason why we urge the Committee to recommend retention of the Seafarer Tax Offset is that it was also designed to promote the training of seafarers.
- 4.20 Those companies eligible for the Seafarer Tax Offset must also have a training plan in place as specified in the *Shipping Reform (Tax Incentives) Act 2012*. The associated Shipping Reform (Tax Incentives) Regulation 2012 require that the company that receives the Tax Offset must ensure that, for each vessel operated by the entity, training is being undertaken by at least one person (the trainee) in each of the following 3 categories:
- Engineer officer training;
 - Deck officer training; and
 - Integrated rating and steward training.
- 4.21 Assuming that all 11 Australian registered ships involved in international trading are receiving the Seafarer Tax Offset, that means 33 (11X3 [1 Engineer+1 Deck Officer+1 Rating]) additional seafarers are in training as a result of the application of this tax measure. The Maritime Workforce Development Strategy³ developed by the former Maritime Workforce Development Forum before its abolition by the Coalition Government estimated, based on a comprehensive industry employment survey undertaken by Orima Research for the Forum in 2012, that the industry

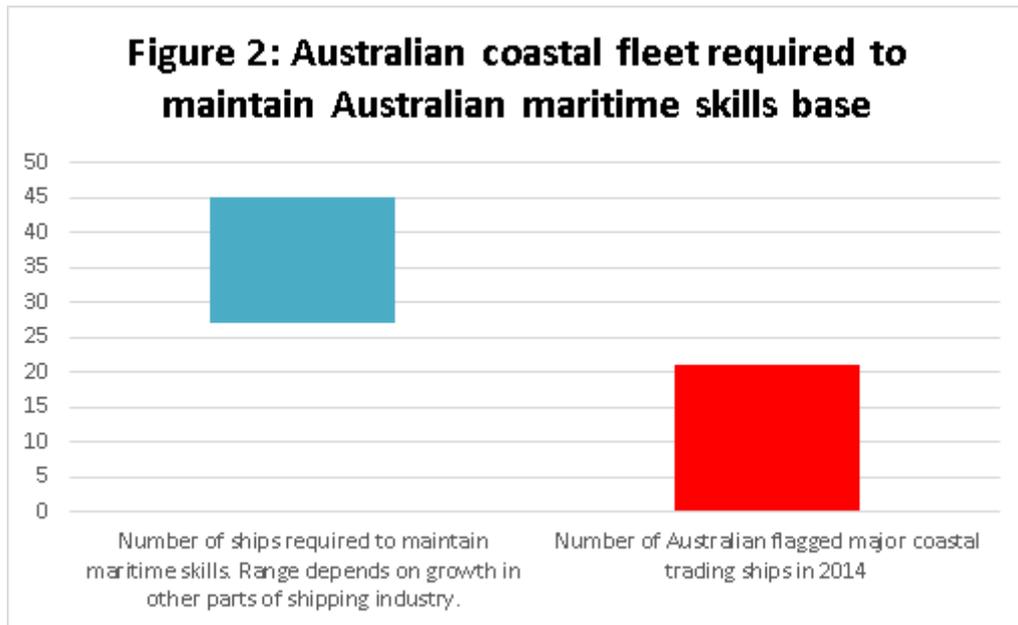
² Department of Infrastructure and Regional Development, *Consolidated information on Certificates and Notices issued under the Shipping Reform (Tax Incentives) Act 2012*
http://www.infrastructure.gov.au/maritime/business/tax_incentives/certificates_issued.aspx

³ Department of Infrastructure and Regional Development, *Australian Maritime Workforce Development Strategy* Prepared by the Maritime Workforce Development Forum, May 2013

requires 215 additional seafarer recruits to be trained annually to meet future demand for seafarers. An additional 33 seafarers in training, would contribute 15.4% towards the annual training requirement over and above the business-as-usual supply, which is highly significant.

5. Tax measures to support shipping investment and employment are the norm in the International shipping industry

- 5.1 Maritime nations across the globe have for some decades adopted fiscal and other measures to address the adverse effects of foreign competition on their national shipping fleets. These measures include the introduction of international registers to support participation of domestic shipping industries in international markets, favourable tax regimes for ship-owners to encourage investment in ships, cost offsets in employing domestic seafarers, ship financing and seafarer training schemes. Australia previously adopted some of those measures in the maritime reforms of the 1980s, until they were wound back in 1996.
- 5.2 Australia's lack of similar structural reforms from 1996 until 2012 resulted in fleet and skills losses and led to a situation where Australian operators have struggled to compete in the domestic and international shipping markets. Over that period there has been next to zero investment in new or replacement ships, resulting in the decline of the fleet today to a point where it is insufficient to maintain the maritime skills base required for Australia as a shipping nation.
- 5.3 Maintenance of a critical mass in the Australian Bluewater trading ship fleet is essential to provide the training berths for the supply of qualified seafarers that support all aspects of the maritime industry, both on-board and onshore.
- 5.4 Recent independent research shows that Australia may be already below that critical mass (See Figure below). The loss of further Australian ships is likely to lead to critical shortages in maritime skills in key sectors such as offshore oil and gas (at the exploration, construction, production and transportation stages), as well as in port management, towage, pilotage operations, for harbour management functions, as well as in ship and work health and safety regulation, maritime training institutes, marine law, marine insurance, marine finance, freight forwarding and in many other facets of sea freight transportation.



Source: Noetic Infrastructure Solutions, Review of the Australian Coastal Shipping Industry and Regulations (unpublished), p. A10, June 2014. The range in the minimum size fleet required depends on the growth in the maritime industry outside of the coastal fleet ranging from 0% to 8.7%.

- 5.5 Maintenance of an Australian fleet is important for supply chain security, particularly for Australia's energy supply, noting that the availability of Australian flagged ships provides the nation with a degree of control over its trade dependency, and its sea routes, that is an essential part of the nation's economic independence, its defence and its maritime and border security.
- 5.6 The importance of taxation measures to support domestic policy was highlighted in the bipartisan House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government report entitled *Rebuilding Australia's Coastal Shipping Industry*⁴ which noted the competitive global effort to attract ships from open registries back to national registries that required industry-specific support measures. It reported that since the late 1990s European nations had created international registries so that their ship owners, who were engaged in international trades, had an opportunity to compete with similar crew cost structures as the emerging Asian economies⁵
- 5.7 The Committee concurred with the Senate Education, Employment and Workplace Relations Committee recommendation that section 23AG of the *Income Tax Assessment Act 1936* be reviewed, and the meaning of "foreign service" for income tax purposes be clarified so that Australian seafarers are not disadvantaged in their earnings capacity relative to seafarers of other nations when working on foreign-flagged vessels on the high seas.

⁴ House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government *Rebuilding Australia's Coastal Shipping Industry* – Inquiry into coastal shipping policy and regulation, The Parliament of Australia, October 2008

⁵ Ibid, pp.8-10

- 5.8 The Shipping Reform Taxation Reference Group, established as one of 3 Reference Groups to advise the then Government on the detail of shipping reform, comprising experts from across all sectors of industry and the financial sector, recommended the introduction of a Seafarer Tax Offset, among an integrated package of taxation measures to support the revitalisation of Australian shipping.
- 5.9 Similar income tax arrangements are offered as an incentive for employers and individuals in almost all developed nations including Belgium, Denmark, Finland, France, Germany, Greece, Netherlands, Norway and Spain. Repeal of the Tax Offset, which is no more beneficial than is provided to seafarers from most other OECD nations, would greatly reduce the employment prospects of Australians in these highly skilled maritime roles.
- 5.10 There is consensus across all stakeholders in the Australian maritime industry that the tax position for investors must be competitive with overseas registries, particularly those where many of the shipowners that would potentially switch to the AISR have their ships currently registered i.e. Singapore, Hong Kong and the UK. All those registries offer a seafarer tax incentive to shipowners.

6. The impact on shipping companies

- 6.1 The measure is important to those companies that have taken advantage of the measure in ensuring the ongoing competitiveness of Australian ship operators in a global market in circumstances where all other shipowning countries also have such a measure in place. All other seafaring nations provide such a tax incentive for employers of seafarers – it is largely a tax free industry in international terms.
- 6.2 Those shipowners require certainty in shipping policy to ensure they continue to operate Australian registered ships.

7. Additional reasons why the Seafarers Tax Offset should not be repealed

- 7.1 It would be premature abolish one of a package of four taxation incentives to support Australian shipping in advance of a Government decision on shipping reform being considered in response to stakeholder comments on the Government's Options Paper on the regulation of coastal shipping in Australia.
- 7.2 The industry requires policy certainty and in particular certainty about passage of any consequential amending legislation that arises from Government consideration of responses to the Options Paper. To abolish the Seafarer Tax Offset in isolation of the Government response to stakeholder comment on the Options paper would demonstrate a piecemeal approach to shipping policy and create further uncertainty for ship investors.
- 7.3 The Seafarer Tax Offset is consistent with the rules for exempting certain overseas employment income in s23GA of the Income Tax Assessment Act and addresses an anomaly whereby up until July 2012, service on a ship in

international waters was not considered to be foreign service because international waters do not form part of the territory of a foreign country, thereby creating an anomaly for this category of overseas employment. Notwithstanding reforms to the s23AG provisions in 2009, seafaring is a truly international occupation, and employers of Australian national seafarers should retain access to the tax offset to ensure Australian shipping remains internationally competitive.

- 7.4 The Budget saving is extremely modest with the Budget papers saying that in underlying cash terms, the saving is \$8.0 million over the 4 year forward estimates period, or \$2M per annum (see P212 of Budget Paper No. 2 of 2014-15).