

**ATTACHMENT TO CSL AUSTRALIA'S SUBMISSION DATED 13  
JANUARY 2009 TO THE SENATE STANDING COMMITTEE ON  
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS  
INQUIRY INTO THE FAIR WORK BILL 2008**

**Submission of CSL Australia Pty Ltd to the House of Representatives  
Standing Committee on Infrastructure, Transport, Regional  
Development and Local Government**

***REVIEW OF SHIPPING POLICY AND REGULATION***

**Introduction**

1. CSL Australia Pty Limited ("**CSL**") welcomes the opportunity to make submissions to the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government ("**the Committee**") in relation to its Review of Australian Shipping Policy and Regulation ("**the Review**").
2. The Australian shipping industry has undergone significant growth and change in the last 5 to 10 years. After a lengthy period of decline during which there was little investment in new Australian shipping tonnage and training of new Australian seafarers, the Australian shipping industry has experienced a major regeneration with greater international competition and new players entering the market.
3. The Australian shipping industry has been the subject of numerous Government and Non-Government reports and reviews since the late 1970s. No doubts others will repeat what is contained in these Reports. The purpose of CSL Australia's submission is not to repeat what others have already said or are more qualified to say. However, as one of the largest Australian shipping companies and one which has experienced rapid growth over the last 7 years, CSL Australia wishes to make submissions about sustaining and promoting the current success of the Australian shipping industry.

**Nature and characteristics of the Australian shipping industry**

4. Australia's geographic identity as a large, rich but sparsely populated island continent has defined, and continues to define, the nature and characteristics of the Australian

shipping industry. Australia has one of the longest continuous coastlines in the world and the preponderance of the major population centres located on the coast. As Australia has vast natural resources as a major source of its wealth, there is a greater requirement to transport primary product from the source to other locations such as manufacturing facilities, major customers and markets. This makes shipping a viable alternative to road and rail transport because it is an efficient and effective means of carrying large loads of cargo between different production and supply points.

5. However, because Australia is an island continent with vast distances between ports but a small population base, the number of ships which exclusively or primarily service the Australian coast is low relative to other nations with similar characteristics (such as the United States of America). As Australia is not at the cross-hairs of major international shipping routes, local customers cannot rely on foreign ships with any regularity or certainty to service their needs. (However, these ships can provide effective competition on particular spot trades.)
6. Historically, the Australian shipping industry had been dominated by 2 major groups - the Government owned line, Australian National Lines (and its predecessors), and large Australian industrially diversified conglomerates (including BHP, CSR, CRA, Caltex and Shell). There were few, if any, local Australian shipping companies which operated as an independent profitable business. In effect, the Australian shipping industry comprised a select "club" of players.
7. As a Government operated shipping line, Australian National Lines (**ANL**) did not have the same commercial imperatives as other Australian shipping companies. Generally speaking, it operated at a loss and serviced a number of different trades on the Australian coast and in Bass Strait. The Australian Government subsidised the operation of ANL which did not have the same commercial imperatives to operate profitably as private operators. It therefore became vulnerable to union pressure and established a benchmark for employment conditions, crewing levels and work practices that applied to other employers in the Australian shipping industry. The lack of reform lead to ANL becoming an uncommercial enterprise. Ultimately, the Australian Government decided that the ownership and running of a commercial shipping arm was not in the national interest and elected to privitise ANL.
8. Until recent times, the major Australian industrial conglomerates owned and operated their own ships chiefly to carry their own cargo. Their shipping operations were not

designed to be independent profit-driven businesses but, rather, to ensure timely and continuous supply of their products to their customers. As a result of the lack of competition on major shipping routes, these conglomerates did not have an incentive to achieve reform, to invest in new shipping capacity or to train new seafarers.

These Australian industrial conglomerates were more concerned about avoiding industrial disputes in their core businesses and therefore were prepared to acquiesce to the demands of the Australian maritime unions to avoid disruption to their supply chain. Several attempts over the last 20 years to regenerate the Australian shipping industry by tax incentives, the granting of subsidies and tripartite reform had failed.

9. One of the keys to operating a successful and profitable shipping business is to ensure that the ships transport commercial cargoes on each leg of its voyage. So, for example, a ship which initially transports a cargo of clinker from Adelaide to Brisbane and then transports sugar from Bundaberg to Melbourne will operate more efficiently than a ship which has to transport a cargo of clinker from Adelaide then returns to Adelaide empty to load another cargo of clinker. This is because the second ship must undertake a ballast leg to reposition itself to undertake the second voyage. During the ballast leg, the ship must incur operating costs and fuel costs when not otherwise transporting commercial cargo. Given the limited number of ships and cargoes on the Australian coast, this often means that Australian ships travel in ballast over long voyages quite regularly. In other words, Australian ships find it difficult to fill their shipping schedules because the ship, on its return voyage, does not transport commercial cargo.
10. As a result, Australia's distinctive physical and market characteristics affect the ability of Australian shipping companies to operate successfully on the Australian coast. The majority of Australian customers enter into long-term freight agreements with shipping companies to ensure continuity of supply. Often the location of ports, the nature of the cargo and scheduling require that more than a single vessel but this rarely allows a ship to be fully occupied.
11. CSL Australia is one of the few independent shipping companies operating on the Australian coast. As major Australian conglomerates have divested their shipping operations to focus on their core business, there has been greater investment and training in Australian shipping than ever before. This has been partly inspired by greater international competition from foreign flagged ships which forced Australian shipping operators to reform restrictive work practices and to treat shipping as a serious business.

## **Australian Shipping Policy and Regulatory Arrangements**

12. Since Federation, Australia has had a protectionist policy of cabotage that has had the effect of reserving voyages on the Australian coast for Australian registered ships and Australian crews. Unlike other nations that had a policy of cabotage where preference was given to nationally registered ships (such as the USA under the Jones Act), Australia does not have an express policy that gives preference based on local registration. Indeed, until 1981, Australia did not have a national register of ships but, rather, Australian ship owners and operators continued to register their ships in the United Kingdom. However, even after 1981 when Australia established its own ships' register, Australia continued the same regulatory arrangements that have existed in the past.
13. Under the Navigation Act, to undertake commercial voyages between Australian ports, a ship must apply for, and obtain from, the Minister of Transport, either a license or a permit. No legal restriction on the nationality of the ownership, registration or crew of the ship applies to obtaining a license or a permit.
14. A ship may apply for a license by simply paying a nominal fee. Obtaining a license entitles the ship to an unrestricted right to undertake voyages on the Australian coast. The quid pro quo of a license is that the crew must receive wages under Australian law applicable to crew on ships engaged in the Australian coasting trade. The applicable wages were determined under the Australian maritime industry award. In the alternative to a license, a ship may also obtain a permit to operate on the Australia coast. The Minister for Transport may grant a permit to an unlicensed ship where he or she determines there is no licensed ship available or adequate to perform the voyage and is satisfied it is in the public interest.
15. The chief feature of a permit is there is no obligation to pay Australian wages to the crew. However, under the current guidelines, a permit has a maximum period of 3 months. To apply for a new permit, a ship must exit Australia to a place outside Australia before returning onto the Australian coast. The limited period of operation of a permit is a significant practical constraint on their use. It requires ships to undertake voyages to places outside Australia even though they may not be as lucrative as undertaking other voyages on the Australian coast.
16. Before 1996, the Minister for Transport rarely, if ever, granted permits. The vast majority of ships were Australian registered and Australian crewed ships operating under licenses. The Minister consulted the Australian maritime unions before

granting permits. In effect, the Australian maritime unions were quasi regulators of the Australian shipping industry.

17. Australian shipping was underpinned by a consensus amongst the members of the "Shipping Club": the Australian maritime unions agreed to Australian ship owners operating their Australian registered, licensed and crewed ships, without effective competition from foreign ships under permits and in the absence of industrial action; in exchange, the Australian ship owners acquiesced to the making of consent awards in the Australian industrial tribunals that reflected conditions of employment that were generally more generous than community standards and included restrictive work practices. This included inflated annualised salaries (which included overtime payments even though such overtime was usually rarely worked), higher paid leave arrangements (6 months' paid leave a year), restrictive and inefficient work practices and outdated demarcated classifications and featherbedding of crew numbers on ships.
18. In a practical sense, the vast majority of ships operating under license were Australian owned, registered and crewed to the exclusion of foreign registered and foreign crewed ships
19. In addition, the Australian and New Zealand maritime unions implemented a ban on foreign ships carrying cargo between Australia and New Zealand under the Trans-Tasman Accord.
20. The effect of Australia's protectionist shipping policy had been higher freight rates for customers and higher prices for products that relied on the shipping industry such as the building and construction industry. In short, cabotage placed pressure on inflation. Conversely, the absence of genuine competition amongst Australian ship owners lead to a lack of incentive to invest in Australian shipping. As a result, Australian shipping fell into terminal decline in spite of the various reforms, such as subsidies and tax incentives, designed to encourage investment in Australian shipping.
21. Against this background, during the 1980s and 1990s, Australia wound back protectionist policies such as tariffs and quotas in its manufacturing industries. However, unlike the majority of other industries, the Australian shipping industry continued to be protected from foreign competition. As Australia relied on shipping to transport large amounts of cargo, especially the mining and building and construction

industry, this continued to have a negative impact on Australia's economic performance.

22. After 1996, the Australian Government began to grant more permits to foreign registered ships. The Government took a more liberal approach to determining whether foreign ships could be granted permits. This had the de facto effect of undermining cabotage as the dominant regulatory theme of Australian shipping. Greater international competition from foreign ships had several consequences. First, Australian shippers began using more efficient and cost-effective foreign ships under permits to transport cargo on the Australian coast. Second, Australian ship owners and operators had greater pressure to reform in order to compete with foreign ships or to exit the market. As a result, Australian industrial conglomerates decided to outsource their shipping requirements to specialist shipping companies, such as CSL Australia, or to engage foreign ships under permits.
23. This new level of competition in the Australian shipping industry has had several positive effects. For the first time for decades, there has been new investment in new shipping capacity and training of Australian seafarers. It has also led to lower freight rates that has benefitted customers.
24. CSL Australia's story is a salient example of the benefits of the Australian Government's decision to liberalise the granting of permits. Before the Australian Government's decision, in 1999, CSL Australia acquired , the River Yarra (now known as the Stadacona) and the River Torrens (now known as the CSL Pacific) which comprised the ANL bulk trades shipping business. Initially, CSL Australia attempted to operate both ships as Australian registered ships under licenses crewed with Australian citizens. Australian terms and conditions of employment under union enterprise agreements applied to the Australian crew. CSL Australia's ships were not internationally competitive and could not obtain sufficient work to be fully employed on the Australian coast. The vessels were operating at an unsustainable loss.
25. CSL Australia unsuccessfully lobbied the Minister for Transport to limit the number of permits to foreign ships to encourage Australian shipping. It also attempted to negotiate with the Australian maritime unions to remove restrictive work practices and improve productivity on the ships to make them more internationally competitive. These attempts proved unsuccessful.



26. Following CSL Australia's inability to achieve reasonable reforms to the ships and shipping laws to make Australian ships more competitive, it decided to sell the CSL Pacific to another company owned by its parent company, based in Boston USA. This left the "River Yarra" operating on the Australian coast servicing the needs of its only remaining customer, Adelaide Brighton Cement Ltd.
27. During 2001, there was an upturn in the Australian building and construction industry such that CSL Australia could not properly service the needs of its major customer, Adelaide Brighton Cement, with its one vessel, the "River Yarra". The demand was such that it required the capacity of more than one ship to meet the scheduling requirements of Adelaide Brighton Cement's customers. This resulted in CSL Australia chartering the CSL Pacific from its parent to return to Australia to service the needs of Adelaide Brighton Cement. However, while CSL Australia had sufficient capacity to service Adelaide Brighton Cement, it did not have sufficient work to occupy fully both ships.
28. Crew inefficiencies impacted significantly on the performance of the River Yarra, and in order to use its ships in a cost-effective way, CSL Australia decided to change the ownership, registration and the nationality of the crew of the River Yarra. As a result of lower operating costs, CSL Australia had a greater capacity to compete with foreign flagged and crewed ships on the Australian coast and to fill gap in its shipping schedule and become a profitable operation.
29. During this period, the Australian maritime unions sought to extend Australian maritime industry award conditions to the CSL Pacific and the Stadacona even though they operated as foreign registered and foreign crewed ships under permits. The unions made an application to the Australian Industrial Relations Commission ("the **Commission**") seeking to apply the major shipping award, the Maritime Industry Seagoing Award ("the **Maritime Award**"), to the crew on the ships. Commissioner Raffaelli of the Commission refused the Australian maritime unions' application on the basis that the Maritime Award discouraged productivity and was unsuited to the efficient performance of work according to the needs of the enterprise. In particular, Commissioner Raffaelli held that the Maritime Award had the effect of:
  - (a) discouraging the performance of routine ship maintenance, overtime and digging out residual cargo without additional payment;
  - (b) facilitating crew swings inconsistent with international standards;

- (c) providing for paid leave at a rate of 0.926 of a day for each day worked at sea approximating 6 months' leave for every 12 months in excess of community standards.
30. This represented a significant breakthrough. It confirmed that permit ships could be operated in a flexible manner. More importantly, the decision established certainty about the policy about the use and effect of permits which encouraged investment in the Australian shipping industry.
31. After consolidating its operations on the Australian coast, CSL Australia purchased another ship, the Iron Chieftain, which was owned by BHP Shipping and historically had serviced the OneSteel business carrying Coal from Port Kembla to the Whyalla steel works and returning with Iron Ore for the steelworks in Port Kembla. CSL Australia decided that the Iron Chieftain should remain Australian registered and Australian crewed and operated on a license on the Australian coast. This decision was based on the fact that CSL Australia could continue employing Australian seafarers and operating the Iron Chieftain as an Australian registered ship because of the reforms and efficiencies achieved under Australian Workplace Agreements. These agreements gave effect to more efficient work practices and conditions. At this time, the Maritime Union of Australia sought to enter into a union collective workplace agreement which encompassed all of the arrangements of the AWAs and were to cover the crew on the Iron Chieftain. These reforms were agreed between the parties.
32. Since then, CSL Australia has adopted various approaches to industrial regulation lawfully available to it on its ships. The different types of industrial regulation is linked to the different legal and operating status of the ships. Where CSL Australia has been able to fully utilise a ship by filling both its head haul and return voyages (ie no ballast legs) and therefore operate it on a commercial basis, then CSL Australia has been prepared to enter into collective agreements with the MUA. CSL Australia has developed a productive and robust relationship with the MUA. The collective agreements have achieved significant mutual benefits for both parties: CSL Australia has reintroduced overtime incentives, removed the uncertainty of contingent costs of redundancy pay and long service leave by rolling these benefits into salary, encouraged greater multi-skilling, broken down rigid demarcations between jobs, created career paths for crew to acquire more skills and removed restrictive work practices; in return, CSL Australia has committed to training more people to work as seafarers and re-invest in the Australian shipping industry with an annual training



budget is in excess of \$2m. Conversely, where a ship has not been able to be utilised fully, CSL Australia has opted to retain greater operational flexibility by applying global conditions of employment in order to compete with foreign ships. However, the foreign crew has their terms and conditions of employment regulated under collective agreements approved by the International Transport Workers' Federation (to which the Australian maritime unions are affiliated).

33. CSL Australia has subsequently grown its business by acquiring further or building new ships. This includes:
  - (a) Entering into a long-term contract with Boral Construction Materials for the carriage of all of that company's plaster grade gypsum. This required the construction of a new US\$45m specialized self-unloading Thevamax vessel which is scheduled for delivery in Australia in early August 2008. This is the first new vessel to operate in the Australian fleet for decades. CSL Australia intends to operate this new ship with Australian crew under collective agreements reflecting the reforms which it has achieved for the other ships in its Australian fleet;
  - (b) Building a new US \$45m transshipment unit comprised of a floating 5,000 tph ship loading platform and two 12,000 tonne self-discharging barges. This operation is located in the Spencer Gulf, to service the expansion of Onesteel's export trade of iron ore at Whyalla.
  - (c) Purchasing Cement Australia's shipping business which included acquiring 2 ships, the Goliath and the Cementco, and chartering third ship "Alcem Calaca". It also involved entering into a long term contract to move all of Cement Australia's building products around the Australian coast.
34. As a result of CSL Australia's significant and rapid growth of its shipping business, CSL Australia is the largest Australian bulk shipping operator on the Australian coast. Since the Iron Chieftain purchase, CSL Australia has sought to operate a core of Australian licensed registered vessels operating under licenses and crewed with Australian residents or nationals. CSL Australia also operates a small number of unlicensed ships (operating under permits) which provide it the flexibility to compete with foreign flagged and crewed ships and therefore maximise the efficiency and reliability of its Australian service.
35. However, given the limitations of the Australian market by virtue of its geography and small population base, Australian shipping policy must allow Australian shipping

operators to have the operational flexibility to deploy ships in a way which allows them to maximise the prospect of their ships being fully utilised. At the same time, the regulatory scheme must recognise that Australian ships cannot fulfill the total shipping requirement of Australian customers and there must be a balance between encouraging Australian shipping but also ensuring that there is an incentive for foreign ships to continue operating on the Australian coast.

36. CSL Australia submits that the key elements of any new shipping policy must reflect the following principles:
- (a) flexibility for shipping operators to have a mix of foreign registered ships operating under permits and Australian registered and licenced ships to accommodate the unique characteristics of the Australian market;
  - (b) a recognition that Australian shipping needs cannot only be done by Australian ships;
  - (c) an understanding that a return to the protectionism of cabotage would reduce competition and therefore reduce productivity and investment in the Australian shipping industry and the downstream industries which rely upon shipping – especially the building industry;
  - (d) encouragement to introduce new Australian tonnage.
37. CSL Australia believes that its shipping reforms have been achieved without Government subsidies due to its strategy of operating a mix of licensed ships and permit ships. However, CSL Australia does not oppose change to the policy mix so long as the underlying principles of the current regulatory scheme continues to apply, any change in policy is tested against these principles and there will be shown to be demonstrated benefits to the Australian shipping industry ,and business and the national economy.

### **Developing an Adequate Skilled Maritime Workforce**

38. Due to years of decline in the Australian shipping industry, there has been a lack of sufficiently trained Australian seafarers to meet the needs of the recent growth of the Australian shipping industry. At the same time as CSL achieved the industrial reforms that it needed to invest in Australian shipping it commenced a programme of recruiting and training new seafarers to work in its fleet. Since then CSL Australia has invested \$2m per annum into its training programme, which is, as far as it is aware, the largest budget out of any other Australian shipping operator.

39. CSL Australia considers that the most powerful basis for developing a skilled maritime workforce is creating an environment where Australian shipping companies are prepared to invest in the purchase of new ships on the Australian coast.
40. In the past, the Australian Government established and operated centralised maritime industry training programmes. CSL Australia submits that these training programmes failed. The funding for the programmes involved imposing a levy on Australian shipping employers and therefore imposed additional costs on the industry. In addition, these programmes produced seafarers who did not have appropriate training relevant to specific ships and employers and created an environment where employees lacked an ethos of working with their employers.
41. The Australian shipping industry is no different to any other industry. It does not require special industry training programmes or arrangements. It simply requires a stable commercial environment conducive to investment which will make it worthwhile to train and employ new seafarers. CSL Australia is committed to its training programme even though it does ultimately lose some of its new recruits to the more lucrative higher paying jobs available in the Australian offshore oil and gas industry.

## **Conclusion**

42. The Australian shipping industry is the strongest it has been for a long time. It has shaken off the shackles of protectionism and international competition has produced efficiencies and reforms. This has led to rationalisation of Australian shipping operators and an environment that has encouraged investment and training.
43. The current regulatory environment is flexible and allows for the balancing of competing objectives. On one hand, it encourages Australian shipping by reserving unrestricted right to trade on the Australian coast to Australian licensed operators. On the other hand, the permit system provides flexibility to operators so that where certain trades are not economically viable because there are uncommercial ballast legs, these trades can still be done to satisfy the needs of Australian customers.
44. Australian ship owners must be allowed to have competitive conditions of employment. This requires a modern and efficient industry award that reflect community standards. The Australian maritime industry has long suffered special arrangements under the protected conditions of cabotage. It cannot be allowed to return to a situation where restrictive practices and inefficiencies will apply. CSL Australia therefore welcomes the recent announcement of the award modernisation

process and urges that the Maritime Award is given priority for reform. A modern award that does not inhibit productivity or the efficient performance of work and contains community standard conditions of employment will create the foundation for further growth and investment in the Australian shipping industry. There also must be flexibility to allow employers and employees to agree to key conditions of employment that suit the needs of the workplace. So, for example, CSL Australia considers that its current arrangements of being able to roll up redundancy pay into an employee's salary should be allowed to continue.

45. While AWAs have been an instrument of removing restrictive work practices and impediments to the efficient operation of ships, the MUA has shown a commitment to negotiating reasonable reforms that establish a strong foundation for a vibrant and successful local shipping industry. CSL Australia considers that the major maritime union has demonstrated a willingness to embrace change so as to reverse the vicious circle of decline that had led to a decline in the number of seafarers employed and lower membership numbers. This change of approach has been facilitated by the current regulatory environment that promotes investment and training.
46. If the Australian shipping industry becomes less efficient or there is a limitation on the use of foreign ships, this will increase shipping costs and therefore freight rates. Many customers who rely on foreign to carry their cargo will experience significant increases in freight rates. In a number of cases, an increase in freight rates will make a significant difference to whether these Australian businesses continue to operate or close down and instead import their products.
47. The current regulatory mix is working well. CSL Australia submits that it should continue.

Chris Sorensen      MD Canada Steamship Lines Australia