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13 April 2012

Mr Tim Bryant,
Committee Secretary
Senate Economics Committees,
SG.64
PO Box 6100
Parliament House
Canberra, ACT 2600

Dear Mr Bryant,

Enquiry into the Shipping Reform Bills

Shipping Australia is pleased to make a submission regarding this important legislation covering the:

- Coastal Trading (Revitalising Australian Shipping) Bill 2012
- Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012
- Shipping Registration Amendment (Australian International Shipping Register) Bill 2012
- Shipping Reform (Tax Incentives) Bill 2012
- Tax Laws Amendment (Shipping Reform) Bill 2012

Shipping Australia is a peak shipowner body in Australia and its member lines (list attached) are involved with over 80% of Australia's international container and car trade and over 60% of our break bulk and bulk trade.

Shipping Australia was excluded from the task force and advisory groups set up to advise the Minister on the proposals prior to the actual drafting of the detailed provisions and subsequent release of exposure drafts of the legislation. In the latter respect, Shipping Australia has been closely consulted and we have appreciated that opportunity to provide advice on the practical implications of what was being proposed.

This process was proceeding satisfactorily in removing, in our view, many problems in the original draft exposure bills, particularly the Coastal Trading (Revitalising Australian Shipping) Bill 2012. The Government originally had in mind introducing this legislation to take effect on 1 July 2013 but when the Minister for Infrastructure and Transport announced the outline of the proposals at a luncheon on 9 September, 2011 he brought the implementation period forward to 1 July 2012 given his

concern at the fairly rapid decline in Australian flag shipping. It is unfortunate that this deadline could not have been extended until at least the end of this year to allow the relevant stakeholders to progress their consideration of these Bills as a matter of urgency. Because some of the provisions, at least in the Coastal Trading Bill, 2012 are confusing and, in our view, require substantial amendment to meet what we understand to be the objects of the Bill. We believe these problems could have been ironed out if we had been given more time.

Whilst our submission concentrates on the Coastal Trading Bill, 2012 we wish to point out that Shipping Australia supports the thrust of all of the Bills listed in terms of what they are trying to achieve to establish a viable and internationally competitive Australian merchant marine. We agree with the Government that there is a need to try and arrest the decline in the Australian shipping industry by levelling the playing field in terms of the international arrangements employed by foreign flag vessels. However, this will only be achieved if the Australian shipping industry can develop a viable and internationally competitive Australian merchant marine as any alternative is clearly a move towards protectionism. The overall effectiveness of the Bills taken as a whole is, in our view, dependent on the productivity improvements that will arise from the proposed compact between the unions and employers.

On 9 September, 2011, the Minister pointed out that the final element of the reform package was labour productivity and the Government was committed to aligning Australian productivity practices with the best in the world. He went on to say that to do this, we will need a compact between industry and unions which must include changes to work practices, a review of safe manning levels and the use of riding gangs on coastal vessels. He stressed the compact was essential to the reform agenda and challenged the unions and employers to do their bit to support the package that was being delivered by the Government. We have not seen any agreed compact and are certainly interested to learn what productivity improvements will arise as a result of that compact.

Turning specifically to the Coastal Trading Bill, 2012 the major problem that the Department has not been able to address is the application for a temporary licence to cover a period of 12 months. A lot of the proposed regime is based on the experience with single voyage permits and continuous voyage permits of up to three months under Part VI of the Navigation Act. That system has worked because it covers one off shipments that can come up with very little notice (single voyage permits) and this particularly applies in the break bulk shipping industry (including project cargo) as well as the bulk shipping industry. It is impossible to forecast the movement of such cargoes over a twelve month period in terms of expected loading dates, kinds and volume of cargo, type of vessel and the ports of loading and unloading of the cargo.

The Explanatory Memorandum for this Bill has a most disturbing paragraph at the top of page 23. It says "the Bill provides that a temporary licence covers a period of twelve months. However, only those voyages where the required information is known, including expected loading dates, loading and discharge ports and cargo type and volumes would be authorised". How can that information be provided over a twelve month period when significant volumes of cargo come up for carriage at short notice?

Whereas the international container industry carrying domestic cargo can possibly estimate the likely carriage over twelve months within the acceptable tolerance limits which are for cargo, plus or minus 20% of the cargo authorised under a temporary licence and in relation to the loading date, five days before or after the proposed loading date. Again this is impossible for the large amounts of cargo that move in the break bulk and bulk industries.

Another issue of concern is the minimum of five voyages, which in our view, discriminates against the smaller coastal shipper who may, for example, have two or three voyages per year and secondly when the Honorable Julia Gillard was Minister for Workplace Relations, she defined incidental carriage of domestic cargo by foreign flag vessels under permit as being two single voyage permits per twelve month period. In that case, the Fair Work Act would not apply to those permits. More than that she regarded as regular trading and the Fair Work Act would apply to those shipments but now we have five voyages as a minimum. We strongly recommend an amendment to state that there are no minimum voyages for the original application for a temporary permit.

In relation to varying that permit when more details become known, and there is an application to vary the temporary licence, the Bill states that the number of voyages again must be at least five. This simply does not make sense. If an applicant does expect to have five voyages over the twelve month period but then finds he has seven voyages he can't seek a variation to the temporary licence? On that basis the cargo would have to move by road or rail or be imported from overseas. We would strongly recommend that there be no minimum number of voyages for a variation, particularly to cover the one off voyages that we are most concerned about.

There was no definition of "acceptable tolerance limits" in the exposure drafts of this Bill provided for industry comment. In our view, the acceptable tolerance limits should not apply at the time of making the general application for a temporary licence but only under clause 61 whereby the holder of the temporary licence, must notify the Minister in writing at least two business days before the vessel is loaded to undertake a voyage authorised by the licence. A contravention of this requirement may be subject to civil penalty and such contravention may also lead to cancellation of the temporary licence. Overall, the proposed variation provisions are, in our view too complex.

We note that the period for the granting of the original application of the temporary licence could take 21 business days, or in other words, basically a month or more if further information is required by the Minister. This period is reduced for a varied temporary licence and this, again, would assist with those one off requirements that would be less than five voyages.

Our recommendation would be to develop the criteria for the original application of the temporary licence to be based on best endeavours and the provision of full information, (where known). The temporary licence should be varied for one off voyages on the basis of new information as discussed above.

We would suggest that the criteria for the temporary licence should be:

(a) The number of likely voyages to be authorised by the licence

(b) The types of cargoes and possible volume (if known) that would be carried

(c) The types and capacity of the vessels that are likely to be used for the carriage of such cargo or passengers

(d) The possible number of passengers (if known)

(e) The range of ports which the passengers or cargoes are expected to be taken on board for disembarkation/unloading

(f) Any such other information as is prescribed by the regulations

The major difference from the criteria listed in Clause 28(2) of the Bill, is the deletion of any minimum voyages and the addition of the word "likely" before "voyages to be authorised" which emphasises the best endeavours approach.

In Clause 32(4) it states that if the application relates to the carriage of cargo, negotiations with the general licence holder must have regard to the requirements of the shipper of the cargo. We fully support this requirement.

In relation to other matters, we note under clause 33 that within two days after the day an application is published under section 30, written comments on the application may be given by a person who would be directly affected or a body or organisation that would be directly affected, or whose members would be directly affected, if the application were or were not granted. In our view, it is very important that such comments be restricted to those who have an involvement in the actual application and not those who may have just had a general interest in coastal trading.

In clause 63, reference is made to the criteria to determine if there is inappropriate use of a temporary licence, to it being used in a way that circumvents the purpose of the general licence provisions or the object of this Act. The purpose of the general licence provision is very vague and gives the Minister the discretion to decide what the purpose of the general licence provisions are!

We have no comment on the Taxation Bills or the (Coastal Trading) Consequential Amendments and Transitional Provisions Bill. In relation to the Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, one comment relates to the determination by the Minister of minimum wages which cannot be less than are specified in the ITF template agreement as set out in Section 61AE (page 30). The Maritime Labour Convention does not provide for a minimum wage quantum. In our view, the Minister should initially determine that the wages should be those contained in the ITF template agreement rather than those being minimum wages with the exceptions the wages to be paid to the Australian officers who should be paid in accordance with the Australian Seagoing Industry Award, 2010. This agreement will be available on AMSA's website or from AMSA itself. It is possible that the wages could be higher than the ITF arrangements as a result of a collective agreement with the seafarers bargaining unit. The clause tends to indicate the Minister could determine that the ITF were the minimum wages, but it also allows the Minister to determine that the wages should be higher than the ITF agreement which in our view should not be the case.

Furthermore, we were concerned to receive advice subsequent to this Bill being introduced into the House , that it was proposed to enable crews of AISR vessels to hold Maritime Security Identification Cards in addition, presumably to a Maritime Crew Visa? The MTOFSR was to be amended accordingly. This would be an added burden compared to vessels on the General Register and make the AISR vessels even more uncompetitive. The difficulties of Australia conducting criminal background checks in countries like the Philippines should not be underestimated. We have recommended to the Office of Transport Security that while approved security plans should be required for AISR vessels , MSIC's should not be required but reliance placed upon the MCV's.

<u>Summary of Proposed Amendments</u>:

Shipping Australia would recommend the following amendments to the Coastal Trading (Revitalising Australian Shipping) Bill 2012.

Clause 28(2) regarding the application for a temporary licence should read:

(a) The number of likely voyages to be authorised by the licence

(b) The types of cargoes and possible volume (if known) that would be carried

(c) The types and capacity of the vessels that are likely to be used for the carriage of such cargo or passengers

(d) The possible number of passengers (if known)

(e) The range of ports which the passengers or cargoes are expected to be taken on board for disembarkation/unloading

(f) Any such other information as is prescribed by the regulations

The application should clearly show best endeavours to supply as much information as possible including the previous history in shipping the types of cargoes specified around the coast and best estimates of likely volumes over the ensuing twelve months.

Clause 51(2) Application to vary a temporary licence should read:

(2) "The application must be in writing and specify the following:

(a) the number of voyages to be authorised by the licence.

(b) and the remaining criteria as per the Bill.

Clause 63(2) Inappropriate use of a temporary licence

This clause should be deleted in its entirety because it is vague and uncertain. Clause 63(1) appropriately sets out the criteria for a show cause notice.

Shipping Australia recommends that in the Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, that Section 61AE(4) wages (page 30 of the Bill) be:

(4) If, when making a determination under subsection (3);

(a) there is an ITF template agreement; and

(b) the ITF template agreement specifies an amount of wages of seafarers performing particular types of work;

then the amount of wages determined by the Minister under subsection (3) for a particular type of work **must be the amount of wages specified in the ITF template agreement for that type of work with the exception of the wages paid to the officers of Australian nationality who shall be paid wages in accordance with Part A of the Australian Seafaring Industry Award, 2010.**

We would be happy to elaborate on this submission or answer any questions that the Committee may have and if so, could you please contact me directly.

Kind regards.

Yours sincerely

Llew Russell
Chief Executive Officer