AIMPE SUBMISSION

to

Senate Rural and Regional Affairs and Transport References Committee

Inquiry into:

Increasing use of so called

'Flag of Convenience' Shipping in Australia

Prepared by

Henning Christiansen

Federal Secretary (Acting)

INTRODUCTION

The Australian Institute of Marine and Power Engineers is the registered organisation which represents qualified Marine Engineer Officers throughout Australia. AIMPE came together as a national body in 1881 after several years during which local organisations were formed in the various colonies of Australia and New Zealand. AIMPE members operate, maintain and repair marine vessels of all sorts including commercial ships of all types and sizes as well as vessels dedicated to the offshore oil and gas sector, tugboats, dredges, ferries, defence support craft, research vessels and Border Force vessels.

AIMPE appreciates the opportunity to make a submission to the Senate Committee about the increasing use of so called 'Flag of Convenience' Shipping in Australia because such use is adversely impacting on the shipping sector of the Australian maritime industry and therefore on the AIMPE members employed in this sector.

EXECUTIVE SUMMARY

1. **'Flag-of-Convenience' shipping is the world's greatest Tax-Avoidance scheme.** Before World War 2 the traditional practice was for merchant ships to be registered in the country the vessel was owned, so TAXATION of these nationally-owned and nationally-Registered ships was very easy. However in the 1920's a group of USA shipowners, sick of paying TAX in the USA, arranged with the Panama government for the Panama Ship Registry to be ***opened*** to any ship regardless of which country the owner resided in. With the payment of a small annual fee there would be zero TAX levied by the Panama government. This allowed hundreds of American-owned ships to abandon the USA Ship Register and ***conveniently adopt the Panama Flag*** by Registering instead in Panama. Ships under such a 'Flag-of-Convenience' trade TAX-free anywhere in the world.

2. **Hundreds of jobs lost** over the last 25 years by AIMPE members through ALP and LNP Governments weakening 'Cabotage' by facilitating use of 'Permits' under the Navigation Act 1912. These allowed the displacement of TAX-paying Australian ships/seafarers in the Australian domestic/coastal shipping industry by TAX-free 'Flag-of-Convenience' ships with mostly TAX-free foreign seafarers.

3. **CSL/MUA MIXED-CREW MODEL**: Since 2004 the arrangements between Canadian Steamships Ltd ('CSL') and the Maritime Union of Australia ('MUA') in operating a CSL Fleet of both foreign Flag-of-Convenience ships as well as Australian-flagged ships with MIXED-CREW has further eroded Australian deck and engineer jobs. In this fleet **Australian Deck and Engineer Officers are NOT employed**, preferring to use Ukrainians and Filipinos on s457 Visas together with MUA Integrated Ratings.

4. **Oil & Gas vessels and Harbour Tugs as well**: The increased use of Flag-of-Convenience Ships is not limited to the carriage of cargo from port to port in Australia. Over the last 25 years the use of Australian-registered offshore Oil & Gas vessels has increasingly been replaced by the use of foreign TAX-free 'Flag-of-Convenience' offshore Oil & Gas vessels as well. There is evidence to suggest this operational mode is now creeping in to the Harbour Towage industry with the TAX-free advantage having the potential to drive out of business any operator who does not swiftly emulate this model.

5. **Australian Sovereignty eroded**: The proliferation of Flag-of-Convenience Ships in Australia's Domestic Economy/EEZ erodes Australia's Sovereignty: our claim to the EEZ is lessened and our laws as to TAX/SECURITY/Ship-Safety/OH&S/ workplace-rights/legal-rights have little application.

6. **National Interest Consequences**: As a result of this unfair competition by 'Flag-of-Convenience' TAX-free foreign ships as well as Australian-flagged CSL ships with MUA Ratings but foreign s457 deck and engineer officers, the Australian domestic/coastal shipping industry is on the brink of complete demise. As this occurs it will finally destroy Australia's Maritime Capability as to Fuel-Security/Defence/Officer-Training/Surveyors-Regulators/HarbourMasters /Pilots.

7. the **2012 shipping reform legislation** of the then Minister Anthony Albanese has worsened this unfair competition by 'Flag-of-Convenience' TAX-free foreign ships, in which TAX-paying Australian companies and TAX-paying Australian seafarers are necessarily the loser.

8. the ***SHIPPING LEGISLATION AMENDMENT BILL*** 2015 tabled in the House by Minister Truss is no solution either, it would merely accelerate the current demise of the industry.

9. **Conclusion**: A bipartisan policy is needed to require a ship to register under the Australian Flag to participate regularly in the Australian domestic/coastal shipping industry, including Offshore Oil & Gas as well as Harbour Towage. If MIXED-CREW arrangements are to persist it is necessary to legislate that Australian Flag Registration must require that all deck and engineer officers on the vessel, plus an engineer/deck Cadet, must be Australian trained and domiciled.

'FLAG OF CONVENIENCE' SHIP: Definition

The Institute rejects the proposition by Shipping Australia Ltd (at item 1.4 of Submission #2 to this Senate Inquiry) that the term "Open Register" would be better than the term 'Flag of Convenience'.

Wikipedia[1] indicates that:-

> **"…Flag of convenience** is the business practice of registering a merchant ship in a sovereign state different from that of the ship's owners, and flying that state's civil ensign on the ship. Ships are registered under flags of convenience to reduce operating costs or avoid the regulations of the owner's country. The closely related term **open registry** is used to describe an organization that will register ships owned by foreign entities…"
>
> The modern practice of flagging ships in foreign countries began in the 1920s in the United States, when shipowners frustrated by increased regulations and rising labor costs began to register their ships to Panama. The use of open registries steadily increased, and in 1968, Liberia grew to surpass the United Kingdom as the world's largest shipping register. As of 2009, more than half of the world's merchant ships were registered with open registries, and the Panama, Liberia, and Marshall Islands flags accounted for almost 40% of the entire world fleet, in terms of deadweight tonnage. Other flags of convenience include United Kingdom (through the Red Ensign group), Singapore and Netherlands…
>
> …As of 2009, thirteen flag states have been found by international shipping organizations to have substandard regulations. A basis for many criticisms is that the flag-of-convenience system allows shipowners to be legally anonymous and difficult to prosecute in civil and criminal actions. Some ships with flags of convenience have been found engaging in crime, offer substandard working conditions, and negatively impact the environment…"

From the above it should be evident that a ship is able to change from its national flag to a 'Flag of Convenience' by paying money to an 'open register' such as Panama, Liberia, Bahamas, Singapore, Marshall Islands, or Kerguelen Islands.

There is no connection between the nationality of the owner of the vessel and the nationality of the conveniently-chosen 'open register' (such as the Kerguelen Islands, a rocky outcrop halfway between Madagascar and Antarctica that is home only to a colony of seagulls).

The entire point of the term 'Flag of Convenience' ship is to identify that the ship is NOT carrying the flag of the nation in which it is owned: this emphasis would be lost if one were to accept the submission by Shipping Australia Ltd to instead call them 'open register' ships.

'CABOTAGE': Definition

Cabotage: Most other countries pass laws so that a ship may only regularly trade in that country's coastal/domestic shipping industry if the ship is Registered under that nation's flag, which makes those ships, seafarers and companies all subject to that nation's laws….including TAX laws.

Australia's willingness to Permit foreign/'Flag of Convenience' ships to regularly trade in Australia's coastal/domestic shipping industry without requiring the ship to Register in Australia and thereby submit to Australian sovereignty is highly unusual. Amongst major shipping nations and OECD nations Australia already has a more wide-open policy than any country other than New Zealand.

[1] Wikipedia at https://en.wikipedia.org/wiki/Flag_of_convenience

'FLAG OF CONVENIENCE' SHIPPING IN AUSTRALIA

1. 'Flag-of-Convenience' Ships: the World's most successful TAX-Avoidance Scheme

Before World War 2 the traditional practice was for merchant ships to be registered in the country the vessel was owned. British-owned ships would always be Registered under the British Flag, French-owned ships would always be Registered under the French Flag, and so on. Consequently TAXATION of these nationally-owned and nationally-Registered ships was very easy.

However in the 1920's a group of USA shipowners, sick of paying TAX in the USA, arranged with the Panama government for the Panama Ship Registry to be ***opened*** to any ship regardless of which nation the owner resided in. With the payment of a small annual fee there would be zero TAX levied by the Panama government. This allowed hundreds of American-owned ships to abandon the USA Ship Register and ***conveniently adopt the Panama Flag*** by Registering instead in Panama. Ships under such a 'Flag-of-Convenience' trade TAX-free anywhere in the world.

The website for the Liberian Ship Registry openly admits that the Liberian Registry is headquartered in Washington, D.C. and administered by:-

> "…a wholly U.S. owned and operated company that provides the day-to-day management for the Republic of Liberia's ship and corporate registry. LISCR is recognized globally … one of the most convenient, efficient, and tax effective offshore corporate registries in the world…."

Subject to the payment of a flat fee for registering the ship under the Liberian Flag the company pays no corporate tax, the ships are no longer on the asset-register of the nation in which the ship is actually owned so national taxation is avoided. Similarly it is prudent to then employ seafarers from countries that charge little or no seafarer/employee tax at all.

Of the 2,771 ships on the Liberian registry 2,581 (i.e. 93%) are foreign owned including 1,185 German, 505 Greek, 109 Russian,…and one Australian-owned.

But none of these are subject to German/Greek/Australian laws, instead the Liberian law applies.

The list of Tax-free 'Flag-of-Convenience' shipping registers has grown enormously and now includes Liberia, Panama, Bahamas, Singapore, Malta, North Korea, Tonga, Marshall Islands, Cayman Islands just to name a few. To prevent the loss of all their national-flag ships engaged in international trade many countries have set up a Second/International Register which offers the same tax-free terms as can be found in the 'Flag-of-Convenience' shipping registers, without having to leave the national flag. Thus Britain set up the 'Isle-of-Man' Second/International Register, Denmark established the Danish International Shipping Register (DIS), the Norwegian government established the NIS, and so on.

What they all have in common is that they all FAIL to TAX those engaged in international shipping.

Balance of Payments & Cabotage:

AIMPE also submits that there are significant adverse macroeconomic consequences from the lack of Australian involvement in Australia's massive shipping task. Australia is spending almost $10 billion per annum on freight transport services – mainly shipping costs. For details please see Attachment 1.

2. Job losses through use of 'Flag-of-Convenience' Ships in Australia

It is simple mathematics: every time we lose an Australian ship it is because it has been displaced by a TAX-free 'Flag-of-Convenience' ship. Members of AIMPE ("the Institute") have lost hundreds of jobs on Australian-registered ships as the increasing use of foreign 'Flag-of-Convenience' ships has displaced the Australian-registered ships with foreign 'Flag-of-Convenience' ships employing mostly TAX-free foreign seafarers. In many cases the Australian-owned ship has been withdrawn from the Australian Flag and the same ship then re-Registered under a 'Flag-of-Convenience', but the ship continues doing exactly the same Australian Domestic/Coastal trading as it had done before, but with the Australian jobs gone.

In 1962 there were 138 Australian-registered/flagged vessels manned by Australian seafarers engaged both in Australia's domestic/coastal and in international trading.

By the time I finished my Engineer-Traineeship with BHP in 1978 this had fallen to 93.

In 2014, this had fallen to just 15 Australian flag vessels, only 4 of them (LNG ships to Japan) involved in international trade.

'Permit' system:

In the 1980's the then Minister Ralph Willis (ALP) decided to open the Australian coastal/domestic shipping trade to direct competition from these TAX-free 'Flag-of-Convenience' ships. This was done by granting foreign ships, subject to foreign law, a Permit giving rights to engage in Australian coastal/domestic shipping trades even though the Permit could not impose obligations that conflicted with the sovereignty of the foreign flag under which the ship was permitted to remain registered. For this reason attempts to then apply Australian laws, including as to ship safety, OH&S, Security, TAX, and so on are mostly without success.

In the 30 years since then one Australian ship after another has fled the Australian tax-system and in 2015 scarcely more than a dozen Australian-trading ships remain registered under the Australian flag. All the rest have re-flagged under a 'Flag-of-Convenience' shipping register or been replaced by a ship already under such a tax-free shipping register.

State-based shipping:

One of the paradoxes of the Australian coastal shipping industry is that the biggest single trading task by volume is performed outside of the Coastal Trading Act regime. That trade is the carriage of bauxite from Weipa to Gladstone. There are four ships operated by Rio Tinto which are completely dedicated to this task:

RTM Wakmatha
RTM Piramu
RTM Weipa
RTM Twarra

There is no Australian or State legislation that requires these ships to be registered in Australia, or to employ Australians so when they originally commenced in this Queensland trade all but RTM Wakmatha continuously operated in Queensland with foreign seafarers under the Isle of Man Flag. All 4 of these dry bulk carriers are now registered in Singapore even though by agreement between Rio Tinto and the unions they are now operated by full Australian crews. Like the Isle of Man Register, Singapore has provided an effective corporate tax rate of 0% for income earned by shipping operators.

3. CSL/MUA arrangements cost hundreds of Deck & Engineer Officer jobs

In 2004 having purchased the vessel IRON CHIEFTAIN from Bluescope Steel, Canadian Steamships Ltd ("CSL") were determined they would not employ MUA Ratings on the vessel. CSL repeatedly asked AIMPE and the AMOU2 to agree to sail the ship with a MIXED-CREW of Australian Deck and Engineer Officers with low-cost foreign Ratings instead of MUA Integrated Ratings ("IR"s).

Having advocated the principle of 'Cabotage' for decades and out of solidarity for the MUA Ratings, both AIMPE & AMOU refused. In fact AIMPE members went on strike to get the MUA to the bargaining table with CSL.

Subsequently the MUA thanked us for our solidarity by doing the deal, in reverse, that we had been too principled to do …ultimately the MUA was willing to sail the ship with foreign Deck & Engineer Officers so long as they kept the MUA Ratings onboard the IRON CHIEFTAIN.

Since 2004, as the CSL fleet grew, about half the vessels were manned with 100% foreign crew and the remainder operated under the same CSL/MUA MIXED-CREW arrangements as commenced with the IRON CHIEFTAIN:-

IRON CHIEFTAIN
ANL BASS TRADER
GOLIATH
CSL BRISBANE
CSL CABO
CSL MELBOURNE
CSL PACIFIC
CSL ATLANTIC
CSL SAMS (renamed CSL WHYALLA)
CSL THEVENARD
HR ENDEAVOUR

This new CSL/MUA MIXED-CREW model involves the CSL Fleet (as it changes from time to time) of both Australian-flagged as well as 'Flag-of-Convenience' ships in which **as a matter of policy Australian Deck and Engineer Officers are NOT employed**, preferring to use Ukrainians and Filipinos on s457 Visas, but MUA Ratings are employed on half of these vessels.

Extraordinarily, whilst the Ukrainian Deck and Engineer Officers are paid 15% LESS than comparable industry pay rates (i.e. Teekay Dry Cargo enterprise agreement rates) the MUA Ratings are paid 11% MORE than the Teekay dry cargo salary for an Integrated Rating. Apparently this same distortion of salary extends across the entire CSL fleet.

Incidentally, it is unclear why MUA Ratings should be paid more to systemically sail with low-cost foreign Deck and Engineer officers instead of Australian Deck and Engineer officers.

The CSL/MUA MIXED-CREW model has seen the loss to Australian Deck and Engineer officers of hundreds of jobs.

[2] Australian Maritime Officers Union

4. Increase in use of Flag-of-Convenience Ships extends to Offshore Oil & Gas vessels as well as Harbour Towage

The increased use of Flag-of-Convenience Ships is not limited to the carriage of cargo from port to port in Australia:-

- over the last 25 years the use of Australian-registered offshore Oil & Gas vessels has increasingly been displaced by the use of foreign TAX-free Flag-of-Convenience Ships as well; and
- there is evidence to suggest this TAX-free Flag-of-Convenience operational mode is now creeping in to the harbour towage industry with the TAX-free advantage having the potential to drive out of business any operator who does not swiftly emulate this model.

Australia's OFFSHORE OIL & GAS vessels join the world's greatest Tax-Avoidance scheme:

Most other countries pass laws so that a ship participating in the exploration for, or exploitation of, oil & gas in that nation's exclusive economic zone (EEZ) must be registered in that country and therefore subject to its laws.

Australia does not do that, thereby making it easy for the 100 to 200 ships (varies according to oil-price and project investment) so engaged to be flagged in TAX-free 'Flag-of-Convenience' registers, thus avoiding Australian tax.

Assistant Minister for Immigration the Hon Michaelia Cash has issued a Determination to make it easier for foreign workers to replace Australian workers working on these vessels. Instead of requiring any such foreign worker to apply for and meet the tests for an Australian work visa, including Labour Market Testing requirements, her Determination that all such workers are deemed to hold a Special Purpose Visa will have the unintended consequence of accelerating the shift to full foreign manned tax-free vessels operating our entire offshore oil and gas industry.

The potential losses to the Australian Treasury are enormous.

Australia's HARBOUR TOWAGE vessels now join the world's greatest Tax-Avoidance scheme :

Harbour Towage operations are a significant revenue-earner in Australian ports as tugboats are needed to help every major cargo ship to berth or un-berth regardless of whether it is a national-flag ship or a TAX-free 'Flag-of-Convenience' ship.

However the model of Australian tug-companies employing Australian seafarers on Australian-registered tugboats is about to change: one of the big three towage companies in Australia has given notice to its employees that it will re-register their tugboats under a Foreign register and sell the tugboats to a new company being set up overseas. They will then cross-hire the tugboats to a local agency which, it appears to us, may suddenly not generate any significant profit to be taxed in Australia. It appears to us it may then be legal under these new corporate arrangements to 'generate' all the profit not in Australia but instead in the overseas country in which the tugboats are now to be owned.

5. Flag-of-Convenience Ships erode Australia's Sovereignty: TAX/SECURITY/Immigration/Ship-Safety/OH&S/ workplace-rights/legal-rights

When a foreign-registered dredging vessel, offshore vessel or cargo-ship works regularly within the Exclusive Economic Zone ("EEZ") of U.S.A., or of China, they are required to re-register the ship under the flag of the country who asserts sovereignty over that EEZ.

But Australia does not assert sovereignty over our claimed EEZ in this way.

Instead Australia allows foreign ships to retain their foreign registry even if they continuously operate entirely within Australia's claimed EEZ. Essentially that ship remains a piece of foreign soil at all times. As a result, these foreign-registered commercial vessels are subject primarily to the laws of that foreign power, not to the laws of Australia.

We understand that only if the foreign vessel carries cargo between successive Australian ports would the ship be considered by Customs to be 'imported' into Australia and therefore subject to our prohibited goods (e.g. Asbestos) laws, tax laws and immigration laws.

However most foreign-registered commercial vessels will escape all these laws because:-

- A foreign-registered cargo vessel, which is continuously engaging in carrying cargo from one Australian port to another, can apply for a Temporary Licence under the Coastal Trading (Revitalising Australian Shipping) Act 2012 which automatically deems the ship to not be imported, no matter how long it continuously works in Australia's claimed EEZ. Hence it operates in Australia TAX-free.

- A foreign-registered **offshore oil & gas vessel** carries cargo from an Australian port out to oilfields in our EEZ. As this is not trade between 2 Australian ports so:-

    - This does not trigger the definition of an 'imported' vessel, so Australian immigration, prohibited goods & Tax laws do not apply.
    - Nor does it trigger the definition of 'coastal trading' under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.
    - Nor does it trigger the definition of 'prescribed ship'[3], so our maritime Workers Compensation laws do not apply.
    - Nor does it trigger the definition of 'prescribed ship'[4], so our maritime OH&S laws do not apply.
    - And whilst the *Navigation Act 2012* nominally applies to a foreign registered vessel working continuously in Australia the effect of s.9 is that the offences and penalties of the legislation cannot be applied to a foreign vessel except whilst it is in an Australian port, entering or leaving an Australian port, in internal waters (rivers, lakes etc) or in the territorial sea (other than in the course of 'innocent passage')…. but NOT when the vessel is out in the oilfields or our wider claimed EEZ.

So for almost all foreign-registered commercial vessels operating continuously in Australia's claimed EEZ Australia's laws do NOT apply. Not our Tax laws, not our OH&S laws, nor our Security laws, Ship Safety standards, OH&S rights, workplace rights or personal legal rights to the same extent as if the ship was registered in Australia. Further, in all the cases where the vessel is deemed to have not been imported, not subject to our Immigration requirements either.

[3] under the *Seafarers Rehabilitation and Compensation Act 1992*
[4] under the *Occupational Health and Safety (Maritime Industry) Act 1993*

There may be political consequences for the nation arising from such timidity in asserting Australia's sovereignty over our claimed EEZ.

Perhaps the Chinese Drilling Ship (with Chinese Navy escort) which unilaterally commencing drilling for oil within the EEZ of Vietnam demonstrates the potential for un-asserted sovereignty to be exploited by other nations?

Loss of Sovereignty: Oil & Gas in Australia's claimed EEZ:

Australia has strong laws providing that no oil company may explore for, or exploit, oil & gas reserves in Australia's claimed EEZ or continental shelf, however there is no requirement that an oil company licenced to do such work must use vessels that are Registered under the Australian Flag and therefore are 100% subject to Australia's laws.

Licenced oil companies are therefore free to engage the services of foreign/'Flag-of-Convenience' ships to explore for or exploit Australia's , oil & gas reserves, but foreign/'Flag-of-Convenience' ships are pieces of foreign soil over which Australia does NOT have sovereignty and the law that applies on that vessel is the law of the nation whose Flag under which it is Registered. As a consequence the application of Australia's laws is severely limited:-

a. **TAX**: If the entire crew is from a foreign country without reciprocal tax arrangements with Australia then the Australian Tax Office has no recourse to apply any Australian Income Tax. If there is a reciprocal tax arrangement with Australia but the source country has legislated to apply NO TAX to it's seafarers then the Australian Tax Office has no recourse to apply any Australian Income Tax.

b. **SECURITY:** Australia's port & maritime security legislation applies to Australian ports and to Australian ships, but with little application to foreign/'Flag-of-Convenience' ships when they are not in a port or near an offshore facility. Whilst seafarers who are Australian nationals are required by Australian law to pass an AFP criminal-activity assessment as well as an ASIO security assessment and be issued with a Maritime Security Identification Card (MSIC) in order to be employed in the Australian maritime industry, no such requirement can be made of a foreign seafarer on a foreign/'Flag-of-Convenience' ship.
Islamic Jihadists may be the captain or chief engineer controlling these vessels yet not even been subject to the AFP and ASIO security clearance that is required of all Australian seafarers, because Australia's security laws, particularly the requirement to pass assessment by AFP and ASIO, cannot be demanded as the foreign/'Flag-of-Convenience' ship is the soil of some other nation.
The same is true of 'Flag-of-Convenience' bulk-cargo ships carrying 40,000 tonnes of Ammonium Nitrate (fertiliser) all around the Australian coast. With the addition of 1,000 kilo-litres of diesel fuel from the ship's fuel system this has the potential to create a mobile bomb with the capacity to destroy Sydney, Melbourne or any other Capital with port facilities. All this under the command of a Captain and Chief Engineer not subject to the AFP and ASIO security clearance that is required of all Australian seafarers.

c. **Lack of immigration/Visa controls:** This loss of sovereign control of oilfields in Australia's EEZ is made worse by the lack of immigration/Visa controls. Assistant Minister for Immigration the Hon Michaelia Cash has issued a Determination to make it easier for

foreign workers to replace Australian workers working on these vessels. Instead of requiring any such foreign worker to apply for and meet the tests for an Australian work visa, including Labour Market Testing requirements, her Determination that all such workers are deemed to hold a Special Purpose Visa (without even making an Application or submitting to an Approval/Rejection process) has the unintended consequence of avoiding scrutiny of those who enter Australia to work in oilfields in Australia's EEZ.

d. Ship-Safety Standards: the Australian Maritime Safety Authority ("AMSA") has full sovereignty to police ship safety standards for a vessel registered under the Australian Flag: it does this under it's powerful 'Flag-State' Inspection powers. However, AMSA does NOT have that same authority in respect of a foreign/'Flag-of-Convenience' ship where the sovereignty for 'Flag-State' Inspection powers is held by the foreign nation under whose Flag the foreign/'Flag-of-Convenience' ship is registered. In this case AMSA is mostly able only to be exercise any powers whilst the foreign/'Flag-of-Convenience' ship is actually within the bounds of an Australian port, and AMSA's powers are the much more narrow/limited 'Port-State' Inspection powers. Consequently whilst many people think that AMSA inspects Australian ships and foreign/'Flag-of-Convenience' ships to the same standard this is incorrect: AMSA does NOT have the legal jurisdiction to examine and test a foreign/'Flag-of-Convenience' ship with the same powers that AMSA can examine and test an Australian ship. As a consequence even when AIMPE has Australian Engineer Officers working on the foreign/'Flag-of-Convenience' ship and they have a safety concern (whether raised openly or through AMSA's Confidential Reporting System) AMSA's reply to our members is invariably that **AMSA does not have the jurisdiction over the foreign/'Flag-of-Convenience' ship in the oilfields in Australia's EEZ to take up the safety concern.**

e. Employee OH&S Standards: under the ***Error! Use the Home tab to apply ShortT to the text that you want to appear here.*** the Australian Maritime Safety Authority ("AMSA") is *the Inspectorate* charged with the responsibility to investigate employee OH&S concerns and resolve disputes over Safety issues.

The OBJECTS of that Act include:-

> **3 Objects**
>
> The objects of this Act are:
>
> (a) **to secure the health, safety and welfare at work of maritime industry employees**; and
>
> (b) to **protect** persons at or near workplaces from risks to health and safety arising out of the activities of **maritime industry employees at work**; and
>
> (c) to **ensure that expert advice is available** on occupational health and safety matters …."

However, the proliferation of a foreign/'Flag-of-Convenience' Oil and Gas sector vessels in the Australian oilfields/EEZ means that AMSA is no longer able to fulfil the objects of this Act.

For 40 years (up until the 2012 "Allseas Drilling vs Minister for Immigration" case in the Federal Court) Australian Deck and Engineer Officers as well as Australian Ratings have been engaged on Offshore Oil & Gas vessels used in oilfields in Australia's EEZ

regardless of whether the vessel was Australian-flagged or a foreign/'Flag-of-Convenience' ship. (refer also to item 5c of this submission).

AMSA has full sovereignty to fulfil the Objects of this Act for Australian maritime industry employees on the few offshore oil and gas vessels remaining registered under the Australian Flag, but AMSA does NOT have that same authority in respect of Australian maritime industry employees employed on a foreign/'Flag-of-Convenience' ship working in oilfields in Australia's EEZ.

Even when AIMPE's Engineer Officers have raised concerns about:-

- Asbestos in the engine room on a foreign/'Flag-of-Convenience' Offshore Oil & Gas vessel; OR
- Harmful vibration/noise levels on a foreign/'Flag-of-Convenience' Offshore Oil & Gas vessel; OR
- Dangerous/un-certified modifications to a high-pressure hydraulic system on a foreign/'Flag-of-Convenience' Offshore Oil & Gas vessel; OR
- Foreign officers drinking vodka whilst on duty on a foreign/'Flag-of-Convenience' Offshore Oil & Gas vessel

…in each case AMSA has written back indicating that because the vessel is a foreign/'Flag-of-Convenience' Offshore Oil & Gas vessel AMSA has NO jurisdiction under this Act and is unable to resolve the OH&S safety issue.

f. **Employee workplace-rights:** prima facie one would expect that Australian employment law would apply to Australian maritime industry employees employed on a vessel continuously engaged in the Australian offshore oil and gas industry within Australia's EEZ, regardless of whether the vessel was Australian-flagged or a foreign/'Flag-of-Convenience' ship. (refer also to item 5c of this submission). But across the spectrum from a foreign/'Flag-of-Convenience' ship with 100% Australian maritime industry employees through to a similar vessel with a mix of Australian and foreign employees and finally to a similar vessel with 100% foreign employees there is no clarity as to the rights of employees to collectively bargain their conditions of employment under Australian law. Further, the ***Error! Use the Home tab to apply ShortT to the text that you want to appear here.*** was legislated by Parliament to provide Workers Compensation & injury-rehabilitation for Australian seafarers, yet its application to the one or two Australian Deck and Engineer Officers (out of 7 or 8 officers with the remainder foreigners on *Special Purpose Visas*) on a foreign/'Flag-of-Convenience' engaged in the Australian offshore oil and gas sector is problematic… the more such *Special Purpose Visa foreign* officers the less employment for AIMPE members and the less clear the basis for asserting Australian jurisdiction of our Workers Compensation and work-place laws.

g. **Employee legal-rights:** prima facie one would expect that Australian common law rights would apply to Australian maritime industry employees employed on a vessel continuously engaged in the Australian offshore oil and gas industry within Australia's EEZ, regardless of whether the vessel was Australian-flagged or a foreign/'Flag-of-Convenience' ship. (refer also to item 5c of this submission). Whilst this may be correct in the event of a Criminal matter it is not clear that a Civil matter would fall under Australian common law, rather it would fall under the common law of Panama, Liberia, Russia, Bahamas or other foreign/'Flag-of-Convenience' jurisdiction.

Loss of Sovereignty: Domestic/coastal shipping in Australia's claimed EEZ:

The Australian domestic/coastal shipping industry and indeed all shipping operations in Australia's Offshore Oil & Gas industry (i.e. within Australia's claimed 200NM Exclusive Economic Zone ["EEZ"]) are not subject to Australia's laws on TAX, Security, Ship Safety, OH&S, workplace rights or personal legal rights to the same extent as if the ship was registered in Australia. Remember, a ship bearing the Russian or Panama Flag is not subject to Australia's sovereignty….it is a piece of foreign soil operating within Australia's domestic economy and the law of the Flag-State is sovereign, not the laws of Australia.

Similar to the concerns above about loss of national sovereignty over the Australian offshore oil and gas industry within Australia's EEZ, the lack of application of Australia's laws to foreign/'Flag-of-Convenience' ships regularly engaging in Australia's Domestic/coastal shipping erodes Australia's sovereignty over it's own economy and EEZ.

All the items a, b, c, d, e, f, and g above in relation to the Australian offshore oil and gas industry within Australia's EEZ are true also for foreign/'Flag-of-Convenience' ships regularly engaging in Australia's Domestic/coastal shipping.

6. 'Flag-of-Convenience Ships' destroy Australia's Maritime Capability: Fuel-Security/Defence/Officer-Training/Surveyors-Regulators/HarbourMasters /Pilots

The current legislated policy settings have already seen the loss of the last Australian-registered oil-tanker and within a handful of years will see the death of Australia's independent dry-cargo maritime capability as well as the loss of training capability for Deck and Engineer Officers.

AIMPE submits that this impending outcome should be a cause for national concern for the following reasons:

Fuel-Security

The last Australian-registered oil tanker ship was quietly replaced with a foreign/'Flag-of-Convenience' vessel some years ago, but some of them until recently still employed Australian seafarers. That has now ended in all cases but one.

The oil tanker ships that have ceased operating in the coastal trade in recent months are:

- *Hugli Spirit* (under the BAHAMAS 'Flag-of-Convenience')
- *Tandara Spirit* (under the MARSHALL ISLANDS 'Flag-of-Convenience')
- *British Loyalty* (under the ISLE OF MAN 'Flag-of-Convenience')
- *Alexander Spirit* (under the BAHAMAS 'Flag-of-Convenience')

All four of these ships are tanker ships which are designed to carry petroleum products. All four ships were registered under a 'Flag-of-Convenience' but were operated by crews of Australian seafarers.

Each ship operated on the Australian coast under a Transitional General Licence. Instead of transitioning to the General Licence category they have in the course of 2014/2015 transitioned out of operations on the Australian coast.

There is only one tanker ship left on the list of Transitional General Licence ships – *British Fidelity* - which is under the ISLE OF MAN 'Flag-of-Convenience' yet for the moment still employs Australian seafarers. On the pattern seen over the last year or so the Committee members should expect that this ship too will transition out of Australian operations before 2017 and the seafarers be dismissed.

Australia will then have ***no*** Australian-crewed tanker capacity, under the Australian Flag or any other Flag.

Australia's fuel security will then be entirely dependent on 'Flag-of-Convenience' tankers with foreign crews under the sovereignty of another nation and so not amenable to Australia's laws as to SECURITY assessments by ASIO and AFP, nor Australia's other laws on TAX, Safety, OH&S, legal-rights, Immigration and so on.

This leaves Australia's economy exposed to potential disruption of imported liquid fuels not just in time of war but also at any time by Islamic Jihadists.

Note also that Australia has failed to maintain in tanks ashore the internationally recommended liquid fuel reserves of 90 days' supply.

Defence

The first Defence consideration is that the Fuel-Security exposure, above, is not just a risk to the entire Australian economy, but this is also the source of fuel for the Army, Air-Force and Navy: and all are equally at risk.

Further, Naval capability is not just about buying some vessels overseas and being able to operate them.

Naval capability is about being able to supply them, and our land forces, via a national-flag coastal shipping merchant fleet registered under the Australian Flag and therefore under Australian sovereign control, commanded by Australian Deck and Engineer Officers.

Note that when Prime Minister Howard sent a small force of Australian soldiers to restore order in East Timor we were not able to maintain their supply without resort to Australian-flagged merchant vessels.

Note also that when war was declared in both 1914 and in 1939 all the foreign flag vessels serving Australia's coastal shipping needs were withdrawn by the nations that controlled that shipping. In both instances at a time when supplies need to be bolstered Australia found itself without sufficient shipping under its control. Australia had to re-build a 'home' fleet and train the skilled deck and engineer officers required to operate them. The greatest naval casualties in both wars were the torpedoing of Australian-flagged merchant ships travelling in convoy, under navy escort, whose job it was to supply Australia's forces and keep Australia's industry running.

Naval capability is also about the ability to build/repair the naval fleet, and refit them, in an Australian port. The practice in most Australian shipyards has been that shipyard steel-workers are typically supervised and managed by retired Australian Chief Engineer Officers whose experience in ship operation and maintenance is invaluable in ship construction and repair.

Note also that such capacity would be enhanced if Government let tenders for construction of naval vessels on an ongoing measured basis that staggers the work over a ten year period rather than demanding immediate delivery of six vessels and then having no further work with obvious consequences for retention of their specialist skilled workforce.

Importantly, if an economic way can be found to retain an Australian national-flag coastal shipping merchant fleet then that 'home' fleet is more likely to direct some ship-repair work to these same Australian ship-yards thus maintaining their viability between naval contracts.

loss of training capability for Deck and Engineer Officers / Surveyors-Regulators / HarbourMasters / Pilots

25 years ago the number of Australian-registered ships in both the Offshore Oil & Gas sector and the domestic/coastal trading sectors of the industry, all operated by Australian companies and employing Australian seafarers as a TAX-paying part of the Australian domestic economy, was

sufficient to fund the employment of Trainee Deck and Engineer Officers through the National Maritime Industry Training Committee ("NMITC"). Funding for these trainees/Cadets was coordinated through the government's Cadet Grant Levy Scheme.

As a consequence of the commercial impact of the increasing displacement of Australian-registered TAX-paying vessels by TAX-free 'Flag of Convenience' ships in 2015 that critical mass no longer exists. The companies that traditionally trained the lion's share of Australian Deck and Engineer Officers have been put out of business by TAX-free 'Flag-of-Convenience' ships and/or the CSL/MUA MIXED-CREW model, and the few companies that remain are so commercially pressured that they can no longer afford to pay for the upgrading of the certification of their existing employees let alone the training of new Deck and Engineer Officer Cadets.

Similarly the influx of s457 Visa or Minister Michaelia Cash's Special Purpose Visa foreign Deck and Engineer Officers into the Offshore Oil & Gas sector of the Australian maritime industry destroys the underlying commercial capacity of Employers in that sector to fund Australian Deck and Engineer Officer Cadet Training or fund the Study Leave required for a junior Deck or Engineer Officer to acquire the intermediate Certificates of Competency on their 10 year path to certification as a Captain or Chief Engineer.

Over the last few years there have been crises in at least 2 of the 3 colleges in Australia that provide training to Class 1 Marine Engineer Advanced Diploma/Degree standard. In both Challenger college in WA and Hunter TAFE in NSW the falling numbers of employer-sponsored Cadets threatens the viability of such classes in that year and impacts on the ability to continuously employ college lecturers that specialise in marine engineer training. As numbers continue to fall one or more colleges will be forced to cease providing marine engineer training altogether.

A further problem is the 'user-pays' approach of TAFE NSW to cost of providing marine engineer officer training which has blown out the fees for a Cadet to $17,000 whilst the aggregate cost through to Class 1 Marine Engineer Advanced Diploma is over $54,000. These price hikes come at a time when employers were already having difficulty paying for training and neither students nor employers can afford these charges. A bipartisan policy is needed for the Federal Government to fund Deck and Engineer Officer Training, both for Cadets but also for the costly intermediate training for subsequent Class 2 and Class 1 certification as well.

The impending failure in maritime capability through failure to train and employ Australian Deck and Engineer Officers has the consequence that Australia cannot supply its own Captains, Chief Engineers, Ship-safety Surveyors, maritime authority Regulators, shipyard/repair managers, Harbourmasters and Pilots.

Unless Liberal, National, Labor, Green and Independent Parliamentarians all develop a new bipartisan policy to legislate dramatic changes to require ships to Register in Australia and to employ Australian Deck and Engineer Officers there will no longer be sufficient fragments of the industry left to provide the necessary qualifying sea service (required by international convention5) for Deck and Engineer Officer Cadets to qualify for their first level certificate or the jobs in which such Cadets can gain the 10 years of further experience and training to become Captain or Chief Engineer.

[5] IMO Convention on Standards of Training Certification and Training

7. Then-Minister Albanese's 2012 shipping legislation made things worse

This unfair competition by 'Flag-of-Convenience' TAX-free foreign ships, in which TAX-paying Australian companies and TAX-paying Australian seafarers are necessarily the loser, has been made worse by the 2012 shipping reform legislation of the then Minister Anthony Albanese:

- the *Coastal Trading (Revitalising Australian Shipping) Act 2012* has failed in its objective, it has not revitalised Australian flag shipping. Australian flag shipping has continued to decline since 2012; and
- the new legislation does not contain the prohibition against use of a foreign ship that is/was in receipt of foreign government subsidies in construction or operation; and
- nor does it require payment of Australian domestic wages when participating in the Australian domestic economy; and
- the new 'Temporary Licence' system is even easier to access than the 'Permit' system it replaces; and
- despite the rhetoric from the MUA and then Minister Albanese the 2012 legislation makes no concrete legislative requirement that in order for ships to participate in the Australian domestic/coastal shipping industry that ship must Register under the Australian Flag, employ Australians, and thereby submit itself to all Australian laws.

8. the SHIPPING LEGISLATION AMENDMENT BILL 2015 is no solution either

Despite the failure of the 2012 shipping reform package to revitalise Australian shipping, AIMPE is concerned that the 2015 Amendment Bill will have further adverse impacts on the coastal shipping industry. The impact of the proposed Shipping Legislation Amendment Bill 2015 would be adverse for the few remaining Australian companies engaged in the shipping sector and adverse for the employment opportunities for Australian Marine Engineer Officers and Deck Officers.

The measures in the Bill which appear to favour the retention of a token presence of Australian Deck and Engineer Officers would be easily avoided by ship operators.

Further, the less frequent reporting requirements would reduce the transparency of the sector and provide Parliament with diminished insight into an industry which is generally 'out of sight, out of mind".

However, the most significant consequence of the enactment of the Shipping Legislation Amendment Bill 2015 is that it has no form of priority for Australian flag ship operators over foreign flag ship operators in Australia's domestic/coastal shipping.

Under the now-repealed Navigation Act 1912, it was an offence for a ship that was not licenced to participate in the coasting trade [s.288 (1)]. However when no licenced ship was available or the service provided by the licenced ships available were inadequate, a permit could be issued to an unlicensed ship to engage in that trade [s.286 (1)]. Ships were not allowed to engage in the coasting trade if they were in receipt of any subsidy or bonus from a foreign Government [s.287]. It was also a requirement of the 1912 Act that the crew of the licensed ship had to be paid Australian wages [s.289].

While the Navigation Act 2012 does require Australian flag ships to be operated by Australian crews it does not deal with the economic regulation of coastal shipping. The new Navigation Act 2012 deals primarily with international shipping operations and the implementation of the standards agreed under Conventions of the International Maritime Organisation (IMO).

The 2012 shipping reform package contains the notice provisions of the Coastal Trading Act. When an application is made for a new Temporary Licence all existing General Licence holders must be notified of the application as must the unions representing Australian seafarers. A General Licence holder may then give a notice in response advising of its availability to carry the cargo. There is then a process of negotiation required after which the Minister has to make a decision on the application – either to grant or refuse the application.

Competing views about the interpretation and application of these provisions were aired in litigation involving the CSL Group, Rio Tinto and the Minister. However all of these arguments would become irrelevant if the 2015 Bill is passed by the Parliament because the concept of a General Licence is proposed to be repealed [s.10 of Schedule 1]. Instead, the Bill proposes the concept of a coastal shipping permit which would be equally open for Australian, AISR and foreign registered ships despite their very unequal status in terms of sovereignty and therefore application of Australia's laws including TAX.

By permitting foreign flag ships to participate in the Australian coastal shipping industry without imposing the condition of payment of Australian corporate income tax, Australia would concede one of the most significant economic controls available to Governments. It would also place Australian companies at an impossible cost disadvantage.

In AIMPE's view this Bill would effectively 'green light' tax avoidance as the basis for low cost shipping transport services around the Australian coast. This is because a very large proportion of the cost advantage of foreign flag shipping is based on the lack of taxes in the numerous flag of convenience countries in which these ships and the operating companies are registered.

If the Australian Parliament endorses the current Bill it would be endorsing tax avoidance by foreign ship operators in the name of providing cheaper freight services within Australia. Everyone likes a bargain but Australia has been campaigning in international meetings for the reduction and elimination of tax avoidance by corporations. Australia will have reduced credibility on this issue if it opens the Australian domestic transport sector to international tax avoiders.

9. Conclusion

A bipartisan policy is needed to create entirely new legislation which will require a ship to register under the Australian Flag to participate regularly in the Australian domestic/coastal shipping industry, including Offshore Oil & Gas as well as Harbour Towage.

If MIXED-CREW arrangements are to persist it is necessary to legislate that Australian Flag Registration must require that all deck and engineer officers on the vessel, plus an engineer/deck Cadet, must be Australian trained and domiciled.

Only in this way can the national interest problems set out in this submission be addressed.

Attachment 1

Balance of Payments & Cabotage

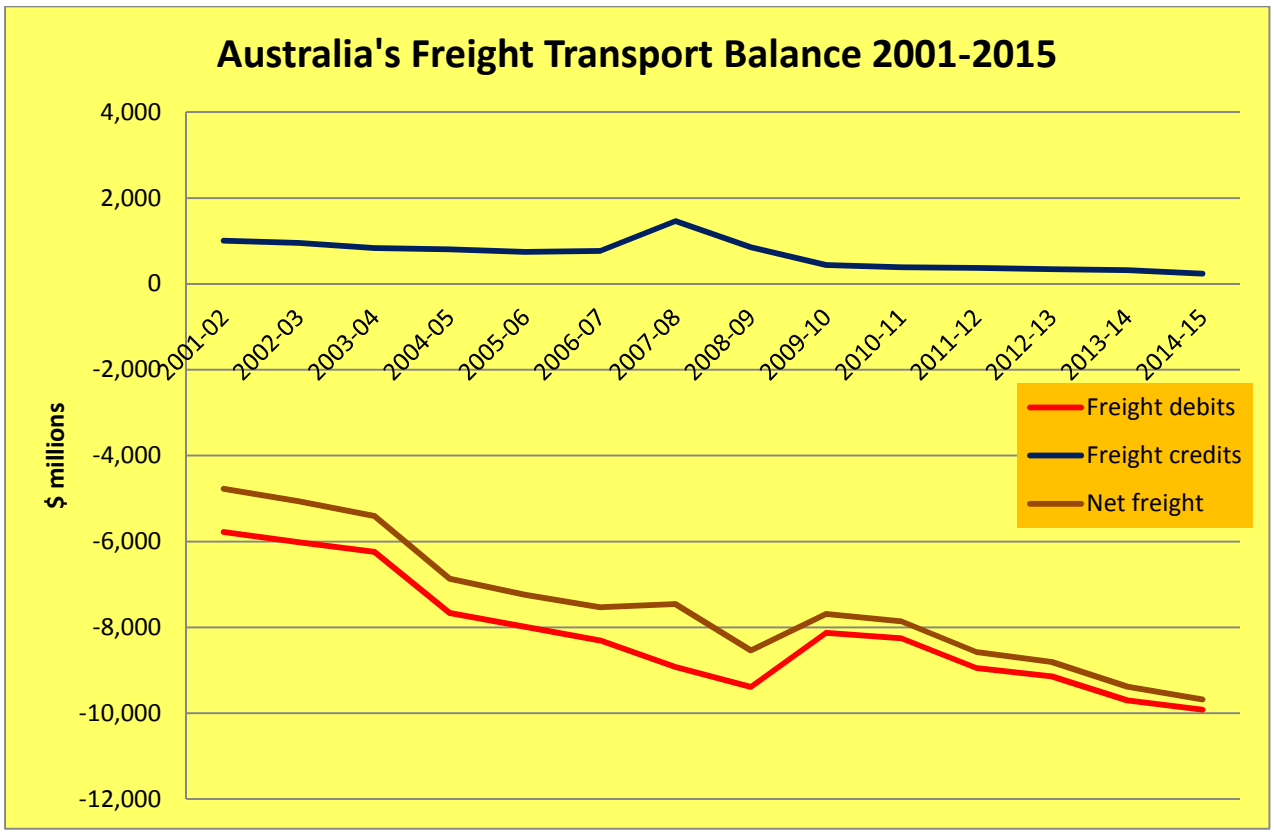
AIMPE also submits to the Committee that there are significant macroeconomic consequences from the lack of Australian involvement in Australia's massive shipping task. Australia is spending almost $10 billion per annum on freight transport services – mainly shipping costs. This is a constant drain on the nation's international balances as can be seen in the graph on the following page.

The Australian Bureau of Statistics figures show an inexorable decline in the freight services credits [the income earned by Australian shipping service providers] after a spike in the heady days before the global financial crash. The peak earnings of over $1,400 million in 2007-08 dropped below $900 million in 2008-09 and have dwindled to less than $300 million over the six years since then. This decline was probably accelerated by the high value of the Australian dollar which caused many Australian manufacturers to reduce output or to shut down operations altogether. This has been one downside of the "resources boom". Much of Australia's coastal shipping has serviced the needs of Australian manufacturing – transporting raw materials to processing plants. The high Australian dollar caused by the resources boom effectively made many Australian goods uneconomic when compared to overseas imports.

AUSTRALIAN FREIGHT TRANSPORT SERVICES Credits and Debits 2004-05 ($ millions)

Australia	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Freight debits	-7,668	-7,983	-8,303	-8,924	-9,388	-8,128	-8,251	-8,945	-9,144	-9699	-9916
Freight credits	801	744	771	1,464	852	438	390	372	341	320	239
Net freight	-6,867	-7,239	-7,532	-7,460	-8,536	-7,690	-7,861	-8,573	-8,803	-9379	-9677

Source: Extracted from *ABS International Trade in Goods and Services, 5368.0*



Source: Extracted from *ABS International Trade in Goods and Services, 5368.0*

On the other side of the ledger, freight debits reduced to just over $8,000 million in 2009-10 as the world economy contracted but has climbed back to just under $10,000 million in 2014-15. $10 billion is a larger drain on the balance of payments whichever way it is looked at. Australia needs to have a debate about whether we can accept seeing this quantum of money flowing out of Australia every year to pay for shipping services provided by foreign companies.

Cabotage – our nearest neighbour

Cabotage is the term which is used to refer to the laws by which countries reserve the carriage of cargoes on their coast to ships of that country. Cabotage laws are very common around the world. Most of our major trading partners have Cabotage laws. The Australia USA Free trade Agreement specifically retains US Cabotage by excluding it from any alteration. Incidentally, the same Agreement also preserves Australia's right to legislate for maritime matters in the same fashion:

> Australia reserves the right to adopt or maintain any measure with respect to maritime Cabotage services and offshore transport services.
> Source: ANNEX II-AUSTRALIA-12, Australia USA Free Trade Agreement

The USA's Jones Act implemented Cabotage in the country early in the 20th century after the British blockade in the early 19th century had stimulated the local shipping industry. However, closer to our part of the world, Indonesia has adopted Cabotage laws in recent years. The impact of these laws was assessed by Gerald Yee and Nazirah K. Din:

> Cabotage principles were implemented when the domestic shipping industry in Indonesia almost collapsed as a result of foreign vessels engaging in coastwise transportation. The Indonesian government implemented the Cabotage restrictions and Indonesia's shipping and offshore marine industry underwent major changes since the introduction of the Maritime Law No 17 of 2008 which was aimed at providing business opportunities and greater market share to Indonesian companies. Cabotage is the principle regulating shipping activities which takes place within a country's waters and recognises that a country is entitled to restrict the activities of foreign vessels operating within its waters.
>
> Source http://www.clydeco.com/insight/updates/view/cabotage-and-its-impact-in-indonesia

According to the same authors:

> Article 8 of the Maritime Law No 17 of 2008 sets out the following principles:-
>
> - That activities relating to domestic sea transportation must be performed by an Indonesian Sea carriage company using an Indonesian flagged vessel which are manned by Indonesian crews; and
> - Non-Indonesian sea flagged vessels are prohibited from carrying passengers and / or goods between island or ports in Indonesian waters.
>
> Source http://www.clydeco.com/insight/updates/view/cabotage-and-its-impact-in-indonesia

The Indonesian approach to Cabotage is not limited to the traditional concept of the carriage of goods and passengers from one port to another. The Indonesian Cabotage regime has been extended to encompass all of the maritime operations in the Offshore Oil and Gas sector:

> When the rules were first introduced, oil and gas companies did not see a threat as they expected the Rules to apply only to passengers and goods. However the Indonesian government later changed the rules to bring oil and gas companies activities under the

law. It was done to encourage Indonesia's shipbuilding industry to grow and protect member of companies of the Indonesian Shipowners Association. Cabotage policies are particularly significant for the oil and gas industry especially where the oil and gas fields are located offshore but still within a country's territorial waters.

With the lack of Indonesian vessels capable of servicing the needs of the oil and gas sectors, exemption tables were created in 2011 in order to avert production losses. Regulation No 22 of 2011 and Ministry of Transport ("MOT") Regulation No 48 of 2011 allowed foreign-flagged ships to continue to operating in Indonesian waters. The first deadline was December 2012 for two types of offshore support vessels: platform supply vessels and ancho handling tug supply (AHTS) >5000BHP with dynamic positioning (DP2, DP3). The next deadline was December 2013 for offshore construction vessels and dredging vessels.

At the end of 2013, the MOT announced it would extend exemptions and MOT Regulation No. 10/2014 became the regulation of reference for offshore vessel Cabotage in March 2014. Exemptions for oil and gas survey vessels, offshore constructions vessels, dredging, salvaging and underwater works expired in December 2014. In December 2015, the current exemptions for jackups, semisubmersibles, deepwater drill ships, tender-assist and swamp bridge rigs will also expire.

Source http://www.clydeco.com/insight/updates/view/cabotage-and-its-impact-in-indonesia

AIMPE submits that Australia should have a fundamental re-think about the approach to maritime policies that has been adopted by both of the major political parties in the last two decades. Australia needs to adopt the principle of Cabotage to ensure that we do not suffer a collapse of our domestic shipping industry due to domination by foreign shipping interests. Australia should also recognise that the principle of Cabotage is not limited to old fashioned trading ships. Indonesia has recognised this and has legislated accordingly. Indonesia now has significant capability in relation to the operation of marine vessels for their Offshore Oil and Gas sector. Unless Australia wants to see Australia's Offshore Oil and Gas sector also dominated by foreign flag vessels operated by foreign crews, Australia should adopt the expanded version of maritime Cabotage now being implemented by our large northern neighbour.