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15 January 2009

Committee Secretary
Senate Education, Employment and Workplace Relations Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By e-mail: eevr.sen@aph.gov.au

Dear Secretary

**Senate Standing Committee on Education, Employment and Workplace Relations
Inquiry into the Fair Work Bill 2008**

CSL Australia Pty Ltd (**CSL**) welcomes the opportunity to make a submission to the Senate Standing Committee on Education, Employment and Workplace Relations ("the **Committee**") in relation to its Inquiry into the Fair Work Bill 2008 ("the **Inquiry**").

CSL is amongst the largest owners and operators of ships in Australia. CSL owns and operates a mix of Australian flagged/licensed and foreign flagged ships operating under both licenses and permits granted under the *Navigation Act* 1912 (Cth). The majority of this mix is Australian flagged/licensed.

In summary, CSL submits that the current regulation under the *Workplace Relations Regulations* 2006 that excludes foreign employers employing foreign crew on ships operating under permits granted under the *Navigation Act* 1912 (Cth) should continue.

Australian Shipping Policy

Australian shipping policy is governed chiefly by the Minister for Transport granting licenses and permits to ships to undertake commercial voyages on the Australian coast. It is designed to balance the competing goals of preserving Australian coastal cargo for Australian ship owners and the need to have an internationally competitive shipping industry that delivers lower freight rates and an efficient commercial maritime transport network.

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.

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. Under s. 288 of the *Navigation Act*, 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 are determined under the Maritime Industry Seagoing Award.

In the alternative to a license, a ship may also obtain a permit to operate on the Australia coast under s. 286 of the *Navigation Act*. 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.

The chief feature of a permit is there is no obligation to pay Australian wages to the crew. Under the *Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping*, 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.

The ability to grant licenses and permits is the principal instrument of Australian shipping policy. The report of the Standing Committee on Infrastructure, Transport, Regional Development and Local Government entitled "*The Inquiry into Coastal shipping policy and regulation Rebuilding Australia's Coastal Shipping Industry*" (published on 20 October 2008) supports the continuation of the current regulatory framework with some clarification of the language used in the Ministerial Guidelines. **Enclosed** is a copy of CSL's submissions to the Inquiry.

The Relationship between Australian Shipping Policy and Workplace Relations Laws

The current regulatory arrangements can only be meaningful and effective where the fundamental distinction between licenses and permits are preserved. This requires ships operating under permits be excluded from the operation of workplace relations legislation. A ship operating under a permit has never been subject to Australian workplace laws. The Australian Industrial Relations Commission has endorsed this approach by rejecting the application of Australian award conditions to foreign crew employed by foreign employers on foreign flagged ships operating under permits (PR966979, Commissioner Raffaelli, 13 February 2006).

The exclusion of foreign employers employing foreign crew on ships operating under permits from workplace relations laws is formally recognised under the *Workplace Relations Act*. Under s. 12(1) of the *Workplace Relations Act*, regulations can be made to exclude a person or entity from a provision of the Act where the Minister is satisfied that the provision should not apply to the person or entity in Australia because there is not a sufficient connection between the person or entity and Australia. Regulation 2.1.1 of the *Workplace Relations Regulations 2006* made pursuant to s. 12(1) of the *Workplace Relations Act* excludes foreign employers and foreign crew on a permit ship from the Act.

Proposal


Clause 31 of the *Fair Work Bill* contains a similar exclusion to s. 12(1) of the *Workplace Relations Act*. The Government has not yet released draft regulations. CSL submits that a similar regulation to the current Regulation 2.1.1 should be included. Unless such an exclusion continues to exist, this will have the effect of undermining the current Australian shipping regulatory framework that has operated for nearly a century.

Shipping schedules, commercial contracts and therefore commercial viability rely upon having the capacity to operate a core of licensed ships and a number of supporting permit ships. CSL submits that, unless permit ships continue to be excluded from the operation of Australian workplace relations legislation, this will:

- reduce the flexibility for shipping operators to have a mix of foreign registered ships operating under permits and Australian registered and licensed ships to accommodate the unique characteristics of the Australian market;
- involve a return to the protectionist policy of cabotage, 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;
- discourage the introduction new Australian tonnage.

The current exclusion for permit ships is critical to the Australian shipping industry. If the exclusion is not retained, this will create significant regulatory and commercial uncertainty and adversely impact on the viability of Australian shipping operators in the current economic environment.

Yours sincerely



Chris Sorensen
Managing Director
CSL Australia Pty Ltd