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Julie Dennett
Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Ms Dennett

**Inquiry into the Maritime Powers Bill 2012 and
the Maritime Powers (Consequential Amendments) Bill 2012**

We appreciate your request for Shipping Australia Ltd to make a submission to a parliamentary inquiry on the Maritime Powers Bill 2012 and the Maritime Powers (Consequential Amendments) Bill 2012, which establishes a framework for the exercise of maritime enforcement powers.

Shipping Australia Ltd (SAL) is a peak shipowner association with 37 member lines and shipping agents (list attached) and with 47 corporate associate members which generally provide services to the maritime industry in Australia. Our membership is involved with over 70% of Australia's international container trade and car trade as well as over 60% of our break bulk and bulk trade.

We are pleased that the Bill does not alter operational roles, functions or responsibilities, nor reallocate existing resources, between agencies and the powers contained in the Bill are primarily based on powers currently available to operational agencies. We observe the clearer legislative framework for the authorisation of specific actions by maritime officers prescribed under this Bill.

It is noted that this Bill is compatible with Australia's human rights obligations to prohibit torture and cruel, inhuman or degrading treatment or punishment and is compatible with the human rights and freedoms recognised or declared in the international instruments.

Australia as a signatory to the International Covenant on Civil and Political Rights (ICCPR), should ensure that seafarers are not criminalised, for which adequate safeguards must be put in place.

Our members sincerely hope that the power given to maritime officers in this bill and the action of such officers are reasonable, necessary and proportionate.

We note that under Clause 104, a maritime officer is defined as a member of the Australian Defence Force, an officer of the Australian Customs and Border Protection Service, a member or special member of the Australian Federal Police, or other person appointed by the Minister for the purposes of enforcing particular domestic laws or international agreements.

The Australian Maritime Safety Authority (AMSA) and the Australian Transport Safety Bureau (ATSB) acting under the *Navigation Act 2012* have certain powers delegated to them by the Minister administering this *Act*. The *Navigation Act 2012* also mentions the Authority of officers of the Australian Customs and Border Protection Service and officers of police authorized in writing by the Authority. We believe that there is merit in referencing AMSA and the ATSB in the Maritime Powers Bill 2012.

We note that subclause 6(2) provides that the Bill is not intended to exclude or limit the concurrent operation of any law of a State or Territory, which means that State and Territory and Commonwealth maritime enforcement regimes can operate in parallel, reflecting similar provisions in existing legislation such as section 10 of the *Environment Protection and Biodiversity Conservation Act 1999*.

In respect to maritime investigations our members are of the firm belief that there must be a 'lead agency', which is specified in legislation to avoid numerous parties boarding a vessel to conduct its own probe into any incident.

We note that clause 35 clarifies that maritime officers may exercise powers under the Bill without a warrant, similar to provisions in existing legislation which is being replaced as a consequence of this Bill (e.g. the *Customs Act 1901*, the *Migration Act 1958*, the *Fisheries Management Act 1991* and the *Torres Strait Fisheries Act 1984*). We acknowledge that enforcement operations in maritime areas frequently occur in remote locations and in some circumstances it would not be feasible to have to obtain a warrant from a Magistrate.

The provision of oversight in relation to the exercise of powers under the Bill to ensure that action taken is justified must be given prominent mention and there must be an avenue of recourse, if it is found that the action was unwarranted.

Clause 53 - Requirement to facilitate boarding, allows a maritime officer to require the 'person in charge' of the vessel to take reasonable steps to facilitate the boarding. This will enable maritime officers to board and will minimise risks to their safety. Clause 103 makes it an offence if that person fails to comply with such a requirement.

Subclause 53(3) provides that the requirement to facilitate boarding is made whether or not the person in charge of the vessel understands or is aware of the requirement, to ensure that a maritime officer is able to carry out the boarding, even where the person in charge does not comprehend the command (e.g. where the person does not speak/understand English). We are pleased that it would not be an offence to fail directions under subclause 53(1) in these circumstances because the requisite fault element would not be satisfied.

Boarding a vessel at sea is a considerably risky task for any person, and as such it should be executed by those who are experienced and capable of performing such an assignment. The Commonwealth must have in place adequate provision to provide for compensation to any person involved in an accident whilst boarding a vessel, as it would be unreasonable to expect the ship's insurance to provide cover in such instances. The 'person in charge' of the vessel must always give prior consideration to safety of the vessel, its crew, the environment and the cargo, before permitting a boarding operation at sea.

Before attempting to board a vessel a Commonwealth officer must make every effort to contact the vessel to notify the intentions of the boarding party. The practicality of the 'person in charge' of the vessel, ensuring the identity of those boarding the vessel has to be given due consideration. Clause 110 deals with the issuing, contents and form of identity cards. How is a 'person in charge' of the vessel going to ascertain the true identity of a Commonwealth officer arriving in another vessel, from a distance?

Subclause 54(1) allows a maritime officer to require a person in charge of a vessel to do certain things, including stopping or maintaining a specified steady course as may be necessary in the circumstances. Clause 103 makes it an offence if the person fails to comply with such a requirement. The 'person in charge' of the vessel must always give prior consideration to safety of the vessel, its crew, the environment and the cargo, before adhering to such instructions from the maritime officer.

Our members are pleased that clause 57 does not displace a person's rights and privileges at common law, including the right to silence, the right not to incriminate oneself or legal professional privilege.

Clause 105 avoids the duplication of Commonwealth provisions regulating the carrying and use of firearms by certain officers. It allows a maritime officer who is authorised in another capacity as an officer (however described) of the Commonwealth or a State or Territory to carry and use arms as a maritime officer under the Bill.

It must be pointed out that the accidental discharge of a firearm on board certain vessels (tankers, gas carriers, other vessels carrying dangerous goods on deck which could result in an explosion) could result in catastrophic consequences not only to the boarding party but also to the master and crew of the vessel.

Clause 107: Protection from suit

Clause 107 provides that authorising officers, maritime officers, 'persons assisting' maritime officers and any other persons acting under the direction or authority of a maritime officer not be liable for an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the exercise or performance, or the purported exercise or performance, of a power or function under the Bill. We understand the reasoning for such a clause, but believe that there must be an avenue of recourse if it can be proved that such officers were corrupt or acted maliciously.

Clauses 117, 118 and 119 provides for compensation payments for acquisition of property; damage to documents; and damage to equipment. Our members are of the view that there must be an avenue to claim for other damages such as delays to vessel and other expenses resulting from unlawful or wrongful actions taken by Maritime Officers. We suggest that such parties should be able to appeal to the Administrative Appeals Tribunal for review of such decisions.

Yours sincerely

Llew Russell, AM
Chief Executive Officer



SHIPPING AUSTRALIA LIMITED

MEMBERS – July 2012

APL Lines (Australia)
Asiaworld Shipping Services Pty Ltd
Austral Asia Line Pte Ltd
CMA CGM
Evergreen Marine Australia Pty Ltd
Five Star Shipping & Agency Co Pty Ltd
Goodman Fielder
Gulf Agency Company (Australia) Pty Ltd
Hamburg Sud Australia Pty Ltd
Hapag-Lloyd (Australia) Pty Ltd
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Hyundai Merchant Marine
Inchcape Shipping Services
"K" Line (Australia) Pty Limited
LBH Australia Pty Ltd
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Mediterranean Shipping Company (Aust) Pty Limited
MISC Agencies (Australia) Pty Ltd
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Australian Shipping Consultants Pty Ltd
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