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AUSTRALIAN SHIPPING CONSULTANTS PTY LTD

20 April 2012

The Secretary
Senates Economic Committees
SG.64
PO Box 6100
Parliament House
CANBERRA ACT 2600

**Inquiry into the Coastal Trading (Revitalising Australian Shipping) Bill 2012 and related bills**

In response to the Committee's invitation dated 23 March 2012, the undersigned begs to submit the following views and recommendations in regard to the above, but with particular emphasis upon the Coastal Trading Bill, as presented to Parliament. In so doing, I also direct the Committee's attention to two earlier submissions made by the undersigned, of which copies are attached hereto for ready reference, and avoidance of repetition.

By way of introduction and identification, the undersigned is the proprietor of Australian Shipping Consultants Pty Ltd, an independent Consultancy specialising in providing outsourcing services to Industry regarding chartering and operations of ships, as well as other related areas within our expertise. We are in our 42nd year of operation with track record involvements in all areas of domestic and export shipping activities.
The undersigned has taken a keen and pro-active involvement over the years in the various policy initiatives and subsequent enactments and adopted procedures by respective Federal administrations relating to Shipping, ever with the aim of presenting views and opinions reflecting the realities of commercial and market driven cargo service needs, and thereby an acknowledgement always, that **shipping is the server of cargo**, not the other way around, a ground rule drummed into the undersigned in his early career with The Maersk Group, now the world's largest **shipowning** organisation. The acknowledgement of this principle, which in a wider sense, in turn translates into Shipping being a provider of **services in the general Public Interest** (judged by the same norms as other types of services by way of efficiency and cost effectiveness, forming part of private enterprise).
It is this philosophy which has guided the undersigned's involvements, and expressed opinions, also in the current Shipping Reform process.

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**a) Cabotage**

From the outset, the undersigned supports the retention of Cabotage (wholly appropriate in principle, now as before for and Island Continent) – but not in a manner which sets out to turn back the clock to the era of "closed coast for foreign shipping", a practice condoned but never actually intended by the original, and as of now still valid, cabotage provisions of the Navigation Act 1912, which in Part VI – The Coasting Trade – allows for granting of permits for unlicensed ships (to engage) :

*Section 286. (1) Where it can be shown to the satisfaction of the Minister in regard to the coasting trade with any port or between any ports in the Commonwealth or in the Territories:*
*(a) that no licensed ship is available for the service; or*
*(b) that the service as carried out by a licensed ship or ships is inadequate to the needs of such port or ports;*
*and the Minister is satisfied that it is desirable in the public interest that unlicensed ships be allowed to engage in that trade, he may grant permits to unlicensed ships to do so, either unconditionally or subject to such conditions as he thinks fit to impose.*

In 1912, as it ought to be still today, it was acknowledged, and appropriately provided for in the legislation, if licensed ships were not available or adequate, and if it was desirable in the **Public Interest (= Cargo Interest)**, then there must by all logic and right be freedom to engage an appropriately available and suitable unlicensed (=foreign) ship to perform the shipper required task. This has been, and remains now as it must continue into the future, a fundamental entitlement essential to the needs of commodity trade on the Coast, in the Public Interest.

**The Coastal Trading Bill 2012**

As expressed in earlier submissions, the undersigned has always been opposed to the abolishment of the **concept : "the Single Voyage"** as a defining basis for seeking and obtaining right to procure the services of an unlicensed (=foreign) ship – a concept definition which has worked to all parties satisfaction for now 100 years, and by its restrictive perspective (in determining cargo size, ports and above all timing) has proven effective and by it basic premise served the interest of both the infrequent, and by extension to the Continuous Voyage (Permit) also provided for repeat voyages, but still under the controlling criteria of the Single Voyage Concept. This concept also ensured absolute control of cargo dispositions i.e. a party applying for a voyage permit could only do so, if so authorized by the controlling cargo interest, by way of a confirmed booking or formal charter agreement.

There is no compelling reasons, for any practical or administrative purposes, to do away with the : Single Voyage Concept – indeed it is demonstrably ill conceived, and will only serve to complicate procedural arrangements, and far worse, impose impossible restrictions effectively causing constraint of Trade.

This concern is widely shared by all Cargo Interests, and generally espoused during the Shipping Reform consultative process, but regrettably so far to no avail.

It became apparent that current Bill drafting, purposely expunging the Single Voyage concept, was by way of political direction, seemingly in response to emotive views expressed especially by union interests, but also some Shipping Industry parties, denouncing the past and current Permit System as being: “infamous and a rort..” and therefore seen as an obstacle to the services, and above all expansion, of licensed shipping on the Coast. These latter views are not supported by the undersigned.

By adoption of the current wording of the Bill, an applicant for a **Temporary License** must demonstrate a requirement for **5 (Five) voyages – as a prescribed Minimum Criterion – and any lesser numbers of voyages would fail to qualify.**

This was not in the original draft but emerged subsequently, by some unknown party input – and as such can only be described as wholly inappropriate and unworkable in practice – in that there are many requirements, not only for the Single Voyage (Cargo), but indeed numbers of Voyages (Cargoes) less than an arbitrary 5 (Five) in number, and are these to be precluded, by legislation, from access to unlicensed (=foreign) ships? Discrimination, and even a breach of Natural Justice is suggested!

If this minimum criterion is retained, it would inevitably lead to applicants with less voyages providing fictitious numbers in order to qualify – and then subsequently claiming “circumstances beyond their control” as reason for a lesser than 5 Voyages actually materializing.

The potential for abuse of the system in pursuit of cargoes is there for less scrupulous shipping operators to apply for voyages covering cargoes for which they have no contractual right (by way of shipper booking or charter), and this could work against the real shipper directly – and there is even a prospective of operators “trading in Temporary Licences”. The lack of prescriptive demands for evidence of “cargo entitlements or authorisation” between shipper and respective shipping operators, in the wording of the Bill, will allow this to occur. Regrettably there was little understanding or acknowledgement of these concerns in the consultative process!

There has been widespread concern as regards the proposed administration of The Temporary Licence concept, especially as regards its requirement for quite specific and detailed cargo and voyage projections 12 (twelve) months forward, as a basis for obtaining a Temporary License, even though there are provisions for variation of same subsequently, in that on the face of it, but subject to actual performance testing, these appear to impose time consuming and cumbersome needs for multiple submissions, far exceeding the current system of application and reporting. The much heralded outcome of “greater transparency and recording of data” would seem to come at a price.

**Summary View and Recommendation**

1) **A renaming of “Temporary Licence” to instead: “Occasional License” would retain same definition of purpose (but allay concerns as regards the wider prospective (intent) implied by the word Temporary).**

2) **In Clause 3 – Object of the Act:**
   **Insert: “(e) yet serves to provide efficient and cost effective freight solutions to Australian cargo interests (i.e. shippers)”**

3) **Clause 28 – Application for a Temporary License**
   **Add:**
   **“ . evidence of contractual entitlement and authority to carry said cargo(es)”**

4) **Delete (Clause 28): “Minimum of five (5) voyages over 12 months” and replace by: “One or several voyages over 12 months”**

It is held that these few, but quite decisive changes, would recognize cargo interests as part of cardinal objectives, and would not only greatly facilitate actual workability but also prevent referred to discrimination. It goes without saying that to give effect to such proposed changes, some consequential re-drafting of the Bill would be required.

In conclusion, the real test and purpose of this Reform Bill as it progresses through the Committee enquiry must be to provide a basic outcome for enactment which does not discriminate (unduly) for or against any one side of the coin (Shipping Industry versus Cargo Interests) **– and above all demonstrate and provide an actual improved outcome in the General Public (National) Interest.**

It is acknowledged that the proposed legislation allows for a 5 year period under the new Temporary License regime, and that therefore unlicensed (=foreign) ships will be able to trade on the Coast during this period – but only within prescribed criteria of the new legislation, and hence the vital importance of the details of same being in all respects workable and reasonable so as to not cause impediments to coastal trade. Having said that, there will no doubt be instances of individual Shippers electing not to be parties to this new costal shipping regime, for economic or other operational reasons, and instead move cargoes by land transportation modes, or even switching to import shipments in place of domestic deliveries. The decision by BlueScope Steel to abandon coastal shipping – and dispose of long serving coastal RO-RO vessel "IRON MONARCH" – and in future move 650,000 tpa of steel coils by rail from Port Kembla to Westernport instead, is early evidence of such development(s).

**OTHER RELATED BILLS:**

- **Shipping Registration Amendment (Australian International Shipping Register) Bill 2012**
- **Shipping Reform (Tax Incentives) Bill 2012**
- **Tax Laws Amendment (Shipping Reform) Bill 2012**

Reference is made to earlier submissions (as attached) in which the views of the undersigned are supportive of all of above measures, perceived as desirable, and in the National Public Interest, as well as being consistent with, and indeed mostly copying, similar legislation already in place at most major Shipping Nations.

However, whilst supportive, the expectations of developments remain guarded, for reasons set out.

Yours Sincerely
AUSTRALIAN SHIPPING CONSULTANTS PTY LTD

Henning Horn
Managing Director