

**House Standing Committee on Infrastructure, Transport, Regional  
Development and Local Government**

**Inquiry into Coastal shipping policy and regulation**

**Submission by the Department of Education,  
Employment and Workplace Relations**

**April 2008**

### **Nature and characteristics of the Australian shipping industry and the international and coasting trades**

1. For the purposes of this submission, the Australian shipping industry is defined by the Australian and New Zealand Standard Industrial Classification (ANZSIC) 1993. Water Transport is a Subdivision (63) of the ANZSIC Transport & Storage industry Division and includes international sea transport, coastal water transport, and inland water transport.
2. The following information relates to the Water Transport Subdivision as it encompasses the Australian shipping industry, including international and coasting trades.

### **Employment**

3. The Australian Bureau of Statistics collects labour market data on the Transport & Storage sector (including Water Transport) on a quarterly basis. As at November 2007, 16,500 persons were employed in Water Transport in Australia predominantly on a full-time basis (87.8% of the workforce was engaged on a full-time basis)<sup>1</sup>.
4. Female employment in Water Transport accounted for 27.9% of total employment. This is slightly above average for the Transport & Storage industry (25.0%), however it is significantly lower than the average for All Industries which is 44.9%<sup>2</sup>.
5. The projected employment growth until 2011-12 in Water Transport is 0.5% per annum compared to 1.2% in Transport & Storage and 1.3% for All Industries<sup>3</sup>.
6. In the November 2007 quarter, unemployment in Water Transport was 2.7%<sup>4</sup>.

### **Workforce Characteristics**

7. The median age of the workforce in Water Transport is 41 years compared to 43 years in Transport & Storage and 39 years for All Industries<sup>5</sup>.
8. Median (full-time, before tax) weekly earnings in Water Transport are \$1,150, which is considerably above the median for both Transport & Storage at \$903 and the All Industries median of \$900<sup>6</sup>.
9. Education attainment is high with 74.7% of the industry having a non-school qualification. This includes 31.2% having a Bachelor degree, 11.1% an Advanced Diploma or Diploma and 23.6% having a Certificate III or IV<sup>7</sup>.

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<sup>1</sup> *Labour Force, Australia, Detailed, Quarterly*, November 2007 Cat No (6291.0.55.003), trended by DEEWR.

<sup>2</sup> *4 quarter average based on ABS Labour Force, Australia*, November 2007, Cat No (6291.0.55.003)

<sup>3</sup> *DEEWR Trend Data based on ABS Labour Force, Australia Quarterly*, November 2007 Cat No (6291.0.55.003)

<sup>4</sup> *DEEWR Special Order based on ABS Labour Force, Australia*, Cat No (6291.0.55.003) – *Calendar Year Average*

<sup>5</sup> *DEEWR Special Order based on ABS Labour Force, Australia*, Cat No (6291.0.55.003) – *Calendar Year Average*

<sup>6</sup> *DEEWR Special Order based on ABS - Employee Earnings, Benefits and Trade Union Membership, Australia*, August 2006, Cat No (6310.0)

<sup>7</sup> *DEEWR Special Order based on ABS - Education and Work, Australia*, May 2007 Cat No (6227.0)

## Policy and regulatory arrangements in place for the coastal shipping sector

### *Regulation of Wages and Conditions – Australian Coastal Shipping Trade*

10. The principal legislation regulating Australia's coastal shipping trade is Part VI of the *Navigation Act 1912* (Navigation Act). This establishes licensing and permit procedures for ships engaged in Australian coastal trade and the wages of the crew on board.
11. The Minister for Infrastructure, Transport, Regional Development and Local Government can either issue licenses to engage in coastal shipping trade, or issue permits to unlicensed ships ('permit ships'), should the Minister for Infrastructure, Transport, Regional Development and Local Government believe that no adequate licensed ship is available and it is in the public interest to do so. A permit may be issued for a single voyage only or may be a continuing permit. Licensed ships and permit ships are subject to different regulatory requirements, particularly in relation to the payment of wages.
12. Under the Navigation Act, all crew members employed on a ship licensed to engage in coastal trade are required to be paid the 'current rates ruling in Australia'. The Navigation Act identifies an Australian Pay and Classification Scale or a transitional award under the *Workplace Relations Act 1996* (WR Act) that applies to seafarers employed in the coastal trade as 'evidence of the rates of wages in Australia for those seamen'.
13. There is no similar requirement for crew members of 'permit ships' to be paid the 'current rates ruling in Australia' or to otherwise comply with Australian labour standards. This is because permit ships are deemed to not be engaged in the coastal trade.
14. Prior to the amendment by the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices), the WR Act contained provisions that extended the conciliation and arbitration powers of the Australian Industrial Relations Commission (AIRC) to employers and maritime workers. The High Court held that, under these provisions, the AIRC could hear matters dealing with award coverage for foreign crews on permit ships (*Re Maritime Union of Australia* [2003] HCA 43; 200 ALR 39).
15. Work Choices amended the WR Act to apply to all constitutionally covered employers and employees in 'Australia'. 'Australia' for this purpose includes the coastal sea of Australia, that is, offshore areas to a distance of 12 nautical miles. Various provisions of the WR Act extend the application of the WR Act to persons, acts, omissions, matters and things outside Australia, ie to the exclusive economic zone (EEZ), the area of the continental shelf outside the EEZ and, in some cases, to the high seas and foreign countries. Section 12 of the WR Act enables regulations to exempt certain persons or entities from the operation of all or any of the provisions of the WR Act if the Minister for Employment and Workplace Relations is satisfied that the person or entity is not sufficiently connected with Australia.
16. As a result of the changed constitutional basis of the WR Act, all crew members (regardless of nationality) employed on a permit ship could be covered by the WR Act and legislative instruments, such as awards, created under it.

17. However, with the introduction of the *Workplace Relations Regulations 2006* (Regulation 1.1 - Chapter 2), all foreign crew members working on foreign-registered ships and their foreign employers operating in Australian waters under a permit became exempt from the scope of the WR Act. The effect of the regulation was to also exclude non-citizen crews on 'permit ships' from State and Territory industrial relations laws.
18. In 2006, the maritime unions challenged the validity of the *Workplace Relations Regulations 2006* in the High Court. This challenge was later withdrawn by maritime unions following the decision of the High Court in *New South Wales v Commonwealth* [2006] HCA 52; 231 ALR 1 ('the Work Choices decision').

### ***Occupational Health and Safety***

19. While the Department does not have any direct policy responsibility for coastal shipping, it is responsible for the Seacare Scheme — a workers' compensation and occupational health and safety scheme for certain seafarers.
20. The Scheme's workers' compensation framework is established by the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act). Occupational health and safety regulation for the Scheme is set out in the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS (MI) Act). The Australian Maritime Safety Authority (AMSA), within the portfolio responsibility of the Department of Infrastructure, Transport, Regional Development and Local Government, performs the OHS inspectorate function for the Scheme.
21. The Scheme's jurisdiction is defined in the Seafarers Act, among other things, as applying to "prescribed ships" to which Part II of the Navigation Act applies. Part II of the Navigation Act applies to various ships including ships that have coasting trade licences.
22. The issue of coastal trade licences under the Navigation Act has implications for the Seacare Scheme.
23. Currently there are approximately 200 ships, 33 employers and 5,700 employees in the Scheme. A ship that is granted a coasting trade licence under the Navigation Act will automatically fall within the jurisdiction of the Seacare Scheme and be subject to the requirements of the Seafarers Act. There are currently around 57 ships that, because each holds a coastal trade licence, automatically fall within the Seacare Scheme and must comply with its workers' compensation and OHS regulatory requirements.
24. Under the Seafarers Act, the employer of seafarers on prescribed ships must obtain an insurance policy from an authorised insurer to cover them for their workers' compensation liabilities under the Seafarers Act. There is no requirement in the Navigation Act that an applicant should demonstrate that it can satisfy requirements under the Seafarers Act before being granted a coasting trade licence.
25. However, not all employers whose ships satisfy the requirements for a coasting trade licence have been able to readily obtain the requisite insurance from private insurers providing Seafarers Act cover. This has resulted in a situation where a ship has been granted a coasting trade licence but the employer cannot comply with its obligations under the Seafarers Act.

26. The regulator of the Seacare Scheme, the Seacare Authority, can be faced with the dilemma of requiring a Scheme employer to obtain insurance that no insurer will provide.
27. This is one instance where inconsistencies have arisen between the interaction of the Navigation Act and Seacare Scheme legislation resulting in practical difficulties for the regulator.

#### ***International Regulatory Arrangements***

28. The Deputy Prime Minister has agreed to consider the possibility of ratifying the International Labour Organisation (ILO) Maritime Labour Convention (MLC) and it is anticipated that consultations with interested stakeholders will commence this year.
29. The MLC is designed to be a comprehensive instrument for the maritime sector, consolidating as far as possible all existing, up-to-date international maritime labour Conventions and Recommendations, as well as principles found in other international labour conventions. The MLC, if ratified, would apply to all seafarers, including those engaged in coastal shipping. The extent of any interaction between the MLC and the Australian workplace relations framework is still to be ascertained.
30. However, the MLC is a very substantial and complex Convention and it will be necessary to undertake an initial assessment of the Commonwealth's law and practice and Australia's compliance with its provisions.
31. It is longstanding practice that ILO Conventions will not be ratified unless all relevant State and Territory governments have agreed to ratification, and until all legislation necessary for compliance is in place in all jurisdictions. To that end and as noted above, the Department anticipates initiating consultations with external stakeholders later this year. These external stakeholders will include industry associations, unions, and State and Territory governments.

#### **Strategies for developing an adequate skilled maritime workforce in order to facilitate growth of the Australian coastal shipping sector**

32. The Department undertakes ongoing skill shortage research, assessing the labour market for over 170 skilled occupations. Research includes contacting employers who have recently advertised vacancies to determine their success recruiting the skills they need. This information is considered in tandem with statistical information on demand and supply trends such as industry activity indicators, training data, wastage and vacancy trends.
33. Results of this research form the basis of the Migration Occupations in Demand List (MODL), which is used to target the skilled migration program to occupations in shortage and which have good longer term prospects, and the National Skills Needs List (NSNL) which is used to determine eligibility of employers and their Australian apprentices for a range of incentives.
34. The Department also conducts surveys of employers in individual regions and/or specific industries which identify occupations in which employers have difficulty filling vacancies.

35. In addition the Government has established Skills Australia, an independent statutory body that will provide advice on workforce development and future skills needs. It will give the Government a comprehensive picture of current skill shortages, provide advice on future demands for skilled labour and establish dialogue with industry stakeholders and State and Territory governments on labour force issues.

### **Skill Shortages**

36. The ANZSIC includes coastal shipping as 6301 Coastal Water Transport. Australian Bureau of Statistics data show the ten largest occupations for this sector are Seafarer, Ship's Master, Ship's Engineer, Ticket Seller, Travel Attendants (not elsewhere classified), Fishing Hand, Ship's Officer, Diver, Master Fisher and Waterside Worker. The Department has not assessed the labour market for these occupations, except for Ship's Engineer and Ship's Master. However, the Department is working with industry to develop and conduct a survey specifically on the maritime sector which will provide information about employers' recruitment experiences. The results of this work are likely to be available later in 2008.

- Shortages of Ship's Engineers were evident when this occupation was researched in mid 2007. However, this occupation is assessed for all vessel sizes and therefore includes a broad range of skills. The research was based on a limited number of contacts and so may not reflect employer experiences across the industry.
  - Ship's Engineer has been included in the Priority Occupations for the Productivity Places Program (POPPP) list which has been developed as part of the Government's *Skilling Australia for the future* initiative. The Government has allocated 450,000 training places over four years to ensure that Australians develop the skills that industry needs.
- Shortages were not identified for Ship's Master when assessed in mid 2007. The majority of vacancies were filled with more than two suitable applicants for each position.

### **Training**

37. The Australian Government supports industry wide strategic planning for training in the transport and logistics industry through the Transport and Logistics Industry Skills Council. The Transport and Logistics Industry Skills Council is funded by the Australian Government to develop, maintain and continuously improve nationally recognised and endorsed Training Packages to meet the needs of the transport and logistics industry sectors. These Training Packages must be developed in consultation with key stakeholders including industry regulatory and licensing bodies. All Training Packages incorporate, wherever possible, the licensing requirements at national or state and territory level.
38. As part of its *Skilling Australia for the future* initiative, the Government recognises the importance of nationally endorsed training in assisting job seekers to acquire skills and gain lasting employment and assisting existing workers to update or upgrade their skills.

39. The Government has allocated funds for 450,000 training places over four years to ensure that Australians develop the skills that industry needs. The training places will be delivered in an industry-driven system, ensuring that training is more responsive to the needs of enterprises and individuals.
40. The initial release of 20,000 of these 450,000 additional training places from 1 April 2008 will be offered to job seekers at the Certificate II and Certificate III levels. Training places for existing workers to update or upgrade their skills will become available after 1 July 2008. The identification of priority occupations for the July round will be informed by the experience of the April 2008 process and by ongoing consultations with Transport and Logistics Industry Skills Council and other stakeholders.

