

## **Submission to Standing Committee on Infrastructure, Transport, Regional Development and Local Government Coastal Shipping Policy and Regulation Inquiry**

### **1. Rio Tinto Group in Australia**

Rio Tinto is a world leader in finding, mining and processing the earth's mineral resources. In 2008, Rio Tinto's Australian investments in iron ore, coal, aluminium, diamonds, uranium, gold and salt were valued at over AUD\$50 billion. These investments employ over 10,000 Australians.

Rio Tinto Marine (RTM) exists to provide Rio Tinto with a comprehensive capability in all aspects of marine transportation, global freight markets and the regulatory environment and it makes this submission on Rio Tinto's behalf.

### **2. Introduction**

Rio Tinto Marine's submission is in response to the Coastal Shipping Policy and Regulation Inquiry

In making this submission, RTM has, as a member of both, read and considered the submissions made by the Australian Shipowners' Association and the National Bulk Commodities Group. It supports those submissions and seeks here to develop further particular aspects of the issues raised in those submissions and to bring additional focus to bear on these matters by bringing them to the Committee's attention.

### **3. Executive Summary**

The Committee has itself made the observation that "Coastal shipping in Australia has been in decline in recent years, while the volume of freight needing transport around the country is growing." That statement is quite correct as it relates to the domestic participation in coastal shipping. It is also confirmed by others making submissions to this Committee. However, the observation itself begs the question as to why this is in fact the case.

The answer we suggest is to be found in the increasingly uncompetitive environment within which Australian coastal shipping is obliged to operate.

There is simply no commercial imperative for shipowners or for operators of ships to either locate or operate assets or their businesses in Australia.

A successful shipping industry is underpinned by three fundamental pillars: a ship registration regime that is flexible and user friendly; a fiscal environment that is attractive

relative to other regimes; and a ready source of skilled, hardworking and a competitive and productive labour force.

The registration requirements for ships in Australia need review; amongst other things, there is a compulsory element in them that should be removed. An alternative to the National Register, such as a Second Register should be considered.

We believe that Australia already has a world class administration in the Australian Maritime Safety Authority, capable of adapting to any changes that might be introduced through the adoption of a Second Register and demonstrating the required flexibility.

The fiscal regime for shipping is not attractive for shipowners and operators. When compared with flag states around the world, Australia is simply not an attractive location within which to own and operate a vessel. Nor does it encourage its citizens to go to sea, because it fails to treat their wages in a manner comparable with other flag states. The tax treatment of ship owning activities requires immediate attention, with a clear view as to what is available elsewhere in the shipping world.

The conditions for employment in shipping in Australia limit the potential for growth in participation. Terms, conditions and wages rates are not competitive with internationally recognised norms. Recognition of this fact will unlock the potential for more Australians not only to be employed at sea but to participate in the wider shipping and related industries.

#### **4. Administration/Registration/Regulation**

The Australian Maritime Safety Authority is we believe a very able and efficient registry authority. However, areas of the legislation which it is obliged to administer are in part, archaic, counter productive and require immediate review. We refer below to only two specific examples, one in the Navigation Act 1912 (Cth) and one in the Shipping Registration Act 1981(Cth).

##### *Navigation Act 1912 (Cth)(Nav Act)*

- Section 287(1) of the Navigation Act 1912 excludes a vessel from engaging in the coasting trade if it is in receipt of a subsidy or bonus from a foreign government. Various foreign flagged vessels under license or equivalent may be owned within a tonnage tax regime or equivalent. If therefore this is interpreted as being in receipt of a subsidy or bonus, such vessel would not be entitled to engage in the coasting trade. There are a number of vessels currently on the coast which are flagged in the United Kingdom, and owned under the tonnage tax system applicable there. These vessels despite being Australian crewed are unable to be licensed as a result of this uncertainty.

This section serves not to protect but rather to inhibit participation in domestic shipping, meaning Australian seafarers are denied the opportunity of employment and shipowners/operators discouraged from employing their vessels on the Australian coast under license.

*Shipping Registration Act 1981 (Cth)*

- Section 12 of the Shipping Registration Act 1981 makes it obligatory to register a vessel in Australia if that vessel is Australian owned as defined: meaning owned by Australian legal entities (natural or corporate) wholly or where they are the majority of co-owners or hold the majority shares in the vessel.

Ship owning is characterised by mobility. Australia should be a location to which ship owners aspire to register their assets; not one which obliges them to do so if they happen to be Australian.

The Australian Shipowners' Association has in its submission made reference to other areas of legislation requiring attention. We would endorse those references and in particular refer to section 23AG of the Income Tax Assessment Act 1936 where there is need for amendment to allow for Australian seafarers engaged in international trades to be on an equal tax footing with their international seafaring colleagues. The imbalance in this area acts as a severe disincentive to local seafarers and prevents them from pursuing an international career at sea.

We would also encourage a review of the Ministerial Guidelines for Granting Licenses and Permits to Engage in Australia's Domestic Shipping.

Interim solutions to the very apparent skills shortage in the ranks of Australian seafarers are required and we would encourage the Government, to consider increasing the categories of 457 visa's to allow for the recruitment of foreign nationals as seafarers, both in the ranks of officers and ratings, as required.

## **5. Fiscal Environment**

The tax regime under which shipping operates within Australia is simply not in any way conducive to ship owning or attractive to ship owners. Shipping is characterised by its mobility and international participation. There are numerous locations around the world that offer a more attractive base from which to conduct shipping operations. If Australia is serious about wanting to redevelop its shipping industry it has to allow that industry to compete on an equal footing.

As long as there other locations offering tax environments that are more attractive to work out of than Australia, Australia will struggle to develop its own capabilities in this industry.

The industry is not asking for anything more than is on offer in other locations. Examples have been discussed in other submissions. The tonnage tax system established in the United Kingdom is but one of these, which has been seen to work very effectively. The

system adopted in Singapore is another. Currently the Australia Tax office receives little in the way of tax from shipping activities, because there are very few shipowners resident in Australia. These alternate regimes recognise the international industry context and are designed to promote growth in the shipping industries within the countries where they operate.

This is the pivotal or key area. Without serious commitment to tax reform in this area; there will be no growth in the domestic ship owning industry. It is common knowledge that as the ship owning presence increases so too does the need for the ancillary and support services and related industries grow. This equates to local employment opportunities, skills development, local spend and tax collection. There is ample evidence of this in the UK, Singapore, Belgium and Norway, to mention just some of the locations where in the recent past, significant tax reformation linked to shipping has resulted in growth.

## **6. Labour supply**

Australians have a proud history of making good seafarers; dependable and reliable in a crisis. We have previously as have others, referred to the current skills shortage. This is keenly felt in the domestic shipping industry, particularly the coastal dry-bulk industry.

However, Australian seafarers (ratings in particular) also have a reputation of not doing basic or routine fabric maintenance and of being relatively expensive when it comes to their award wages and conditions of employment. This was eloquently canvassed in the High Court decision of:

***Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc***

**(2003) 200 ALR 39; (2003) 77 ALJR 1497; (2003) 121 IR 103; [2003]**

**HCA 43**

In this case the court found for the Unions, holding that the Industrial Commission (AIRC) did have jurisdiction over foreign crew employed on a vessel engaged in the coasting trade; but referred the matter back to the commission; where the commissioner refused to apply the Maritime Industry Seagoing Award to the two ships concerned, largely because of "inappropriate" Australian work practices.

The commissioner indicated clearly that applying the full seagoing award to the ships would discourage productivity, recognising that discouraging productivity was inconsistent with the objectives of the Work Place Relations legislation.

The commissioner made specific reference to particular work practices cited by the shipowner and which had evidently not been refuted by the unions; these included:

- Australian crews were unwilling to undertake routine maintenance;
- swing arrangements were inconsistent with international standards;
- the leave accrual of 0.926, and

- there is no monetary incentive to work overtime, and it is therefore resisted.

The Commissioner went on to state that the application of the award to the two vessels would: "most likely place the employer in a position where necessary changes in the name of efficiency would be resisted. Inappropriate work practices based partially on award provisions and partially on custom and practice might be the order of the day".

With these work practices at play, it is Rio Tinto's experience that the cost of crewing a dry bulk carrier on the coast with Australian crew is significantly higher than if the same ship was crewed with international seafarers, the latter costing about 26% of what it would cost with an Australian crew and conditions. In addition to which, the maintenance levels on the ship decline, resulting in significantly higher dry-docking costs.

Stimulation of the domestic shipping industry and an upswing in placements and employment would see increased education and training, which would result in a reversal of this trend and an alignment more in keeping with best world practice.

## 7. Conclusion

Rio Tinto believes in a robust domestic shipping industry that is engaged, embracing of change and competitive on it merits not as a result of protection or cross-subsidisation.

A revitalised domestic shipping industry would see growth in the myriad of support service industries: resulting in more jobs and economic growth.

Such revitalisation will only happen as and when the fiscal environment within which ownership and registration of ships is such that Australia has become an attractive business location: a location of choice from and within which to own and operate ships.

When that happens there will be growth in economic activity within support service industry, with net benefit to the national economy.

In the interim, a re-examination of the regulation and legislation affecting coastal shipping coupled with amendments to the immigration requirements, will afford a smooth transition to a revitalised coastal shipping industry.

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