3

Legislative review and reform

Coastal shipping regulatory framework in Australia

3.1 The Committee has examined the existing coastal shipping regulatory framework in Australia with the intention of recommending options for regulatory reform which could lead to a competitive and sustainable Australian coastal shipping sector. In particular, the Committee examined the following legislation, regulations and guidelines as they relate to coastal shipping:

Table 2.1 Table of the legislative and regulatory framework

The Navigation Act 1912

Part VI of the Act applies to vessels entering Australia (***operating*** **under permit in the coastal trade**) and vessels introduced by an Australian entity to operate permanently on coastal voyages (**under licence and *engaged* in the coasting trade**). There is a clear distinction made by the DITRDLG between operating (under permit) and engaged (under licence). This distinction is important because if a ship is deemed to be engaged then it must be licensed and therefore required to comply with several Australian acts.

Coasting trade licences

Section 288 of the Act provides for a ship to be licensed to enable it to engage in the coasting (i.e. interstate coastal) trade. The legislation sets no restriction as to nationality of the ship or the crew - it is only necessary that the ship complies with a number of conditions, namely that:

- the crew on board a licensed vessel must be paid Australian wages when engaged in the coasting trade (s.288);
- the crew must have access to the ship's library for passengers if there is no library for the crew on the ship (s.288); and
- the ship must not be receiving any subsidy from a foreign Government (s.287).

The Act allows a ship operating with a licence on the coast to also participate in foreign trade and in these cases it is only required that the ship meet requirements for the licence for the period when the vessel is engaged in the coasting trade.

Section 289 relates to the requirement of paying Australian wages and states:

- Every seaman employed on a ship engaged in any part of the coasting trade shall, subject to any lawful deductions, be entitled to and shall be paid... wages at the current rates ruling in Australia for seaman employed in that part of the coasting trade....

Licences may be issued for a period of up to three years but in practice are issued for up to one year.

Coasting trade permits

The Act allows non-licensed vessels to carry interstate coastal cargoes in certain circumstances where they have been issued a permit. The relevant provision is Section 286 of the Act, which provides that a permit may be issued to a non licensed ship to carry coastal cargoes in instances where:

- no licensed ship is available to meet the needs of shippers of domestic cargoes [the availability test, ss.286(l)(a)]; or
- where the service provided by licensed ships is not adequate to meet the reasonable needs of shippers [the adequacy test, ss.286(l)(b)]; and
- it is in the public interest.

Unlike licences, permits are issued at the discretion of the Minister (or his/her delegate).

A permit can be either a Single Voyage Permit (SVP) for carriage of a specified cargo between designated ports at a particular time or a Continuing Voyage Permit (CVP) for a number of successive voyages between designated ports. The recent practice is to issue a CVP with up to a three month validity allowing a ship to trade between specified ports within this period.

A ship using a permit shall not be deemed to be engaging in the coasting trade, that is, it is not subject to the licensing requirements for vessels operating in the coasting trade.

Navigation (Coasting Trade) Regulations 2007

The Regulations are subordinate to Part VI and supplement its provisions. They provide the means, including prescribed forms, by which applications are made for licenses and permits. The Regulations specify the fees for a licence or a permit and provide the mechanism to demonstrate that crews on licensed ships have been paid Australian wages as required by section 288 of the Act. The Regulations also set the time frames for the processing of permit applications.

Ministerial Guidelines for Issuing Coasting Trade Licences and Permits

To supplement the provisions of Part VI and the Regulations, Ministerial Guidelines for Issuing Coasting Trade Licences and Permits (the Guidelines) have been issued to provide guidance for Departmental delegates of the Minister in making decisions regarding issuing licences and granting permits and to serve as a source of information for the shipping industry and other stakeholders. These Guidelines have been updated over time to reflect any relevant developments affecting the administration of the Act and are subject to regular amendments to remove uncertainties when they emerge, consistent with existing legislation. While the Guidelines themselves have no legal status, they are a key working document for administration of the regulatory regime and their provisions reflect the wording of the legislation, the Regulations, guidance from legal actions and advice, and current public interest considerations.

The Customs Act 1901

The importance of The Customs Act 1901 for the purpose of coastal shipping is based on the question of whether a ship entering Australia to carry domestic cargo is imported under the Act. A major consideration is the DITRDLG permit because coasting trade permits are one of the factors the Australian Customs Service (ACS) considers in determining whether a vessel needs to be 'entered for home consumption'. Vessels that have been 'entered for home consumption' are deemed by the Navigation Act to be Australian ships and are covered by Part II of the Act. Ships arriving at Australian ports come under the control of the ACS. A decision to "enter the vessel for home consumption" is dictated by Customs legislation and practice based on legal precedent. Generally, a vessel that has been on an international voyage to Australia, takes on the status of an imported vessel if its international voyage is terminated or suspended. If its status is "imported", ACS requires the owner of the vessel enter it into home consumption. Being entered for "home consumption" has the implication of making the ship and its equipment subject to a range of domestic legislation, including liability for GST and excise duties.

The Migration Act 1958

The Migration Act provides for all foreign crews of either licensed or permit ships to be subject to visa requirements, and whether or not a particular type of visa is available will have implications for the ability to operate a ship as a licensed vessel with a foreign crew. The impacts of migration regulations primarily affect crews on longer stays in Australia, either on board foreign vessels which have been licensed or are operating on Continuing Voyage Permits. Crew on board vessels operating under a Single Voyage Permit would normally be regarded as similar to other foreign crews on vessels travelling to Australia in the international trades. Crew on a commercial vessel operating under a coastal trading licence issued by the Department require a Maritime Crew visa and a Long Stay Temporary Business visa for skilled workers who remain working on the vessel.

The Workplace Relations Act 1996

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 that applies to seafarers employed in the coastal trade as 'evidence of the rates of wages in Australia for those seamen'.

The Seafarers' Rehabilitation and Compensation Act 1992

The Occupational Health and Safety (Maritime Industry) Act 1993

A ship covered by the Part II of the Navigation Act (section dealing with Masters and Seamen) is also covered by the Seafarers' Rehabilitation and Compensation Act 1992 and the Occupational Health and Safety (Maritime Industry) Act 1993. The practical effect is that employers of seafarers on these ships are liable for compensation coverage and health and safety standards for crews under Australian legislation.

The Shipping Registration Act 1981

Part VI of the Navigation Act 1912 does not restrict the licensing of coastal trading ships to Australian flagged vessels. This reflects the history of Part VI and the fact that until the Shipping Registration Act 1981 (the Act), United Kingdom shipping registration laws applied in Australia. The Act was introduced because the United Nations Convention on the Law of the Sea (UNCLOS) requires Australia to maintain a register in respect of all ships flying the Australian flag (except for certain exempt ships, being mainly small ships). AMSA administers the Australian Register of Ships under the Act. The Act requires that a vessel owned by an Australian entity shall be entered in the Australian register of ships. Foreign-owned ships operating under permits are not deemed to be Australian and maintain foreign registry. The Act confers nationality on Australian ships and grants the right to fly the national colours; provides, in some situations, for the conferment of title in ships; and provides for the registration of mortgages.

Source *DITRDLG, Submission No. 15, pp. 25-33 & p. 43; Richard Webb, Coastal shipping: an overview, Research Paper No. 12 2003-04, Parliamentary Library, pp. 37-8; Department of Education, Employment and Workplace Relations, Submission No. 48, p. 3.*

Review and reform

Navigation Act 1912, Part VI

3.2 The Committee received submissions from a variety of sources suggesting that various reforms are needed in regards to the licensing, but in particular the permitting, provisions of Part VI.[1] As its title suggests, the *Navigation Act 1912* is an old document that reflects a different time in Australia's history. Until 1982, Australian ships were registered as British ships and therefore the license and permit provisions of Part VI reflected the need to allow for British ships to operate on the Australian coast. As such, cargo preferences are not linked to the flag of a ship but to the payment of Australian wages.[2] This has resulted in a situation where foreign owned and crewed vessels are able to operate on the Australian coast.

Coasting trade permits

3.3 The Committee has reviewed much evidence in relation to the permit system and heard differing arguments—some supporting a tightening of the permit system while others believe it is working effectively and should remain the same.

1 For example see, Rio Tinto, *Submission No. 60*; and MUA, *Submission No. 45*.

2 ASA, *Submission No. 29*, p. 63.

3.4 The wide range of views relating to the permit system cannot be overstated. Of those who argue for reform, some have done so because they believe a liberal application of the permit system is undermining the development of an Australian coastal shipping industry by allowing an increasing amount of foreign flagged ships and crew to operate on the Australian coast, thereby rendering Australian shipping uncompetitive with other forms of transport in Australia (road and rail).[3]

3.5 Unions, in particular, have made substantial recommendations designed to tighten the permit system and facilitate competitive neutrality between coastal shipping, road and rail as well as between licensed ships and permit ships.[4]

3.6 Shipping and ship owner organisations have argued that the system is too flexible and open to interpretation which can impact negatively on business planning.[5] They believe that the Ministerial Guidelines are too flexible and that the administration of the permit system within the DITRDLG can be problematic for a number of reasons, including a lack of shipping knowledge and poor communication between the policy and administrative divisions of the Department.[6]

3.7 BP is concerned that the system is not flexible enough because permits take two days or longer to be approved and if last minute changes occur (which often happens) then the permit application must also be changed and resubmitted.[7]

3.8 There are also those who believe the permit system works well.[8] ANL has advised the Committee that the current system 'works well at matching the demands of shipper with shipping services' and that the DITRDLG 'does a great job in the administration of the system and their efforts should be acknowledged'.[9]

3.9 All, however, agree that a permit system of some kind is an important component of Australia's coastal shipping regulatory regime.[10]

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3 MUA, *Submission No. 45*, pp. 28 & 29; Martin Byrne, *Transcript 17 April 2008*, p. 29.

4 MUA, *Supplementary Submission No. 53.1*, pp. 14-18.

5 CSR, *Submission No. 28*, p. 6; ASA, *Submission No.29*, p. 72.

6 ASA, *Submission No.29*, p. 72; and Mr Llewellyn Russell, *Transcript, 17 April 2008*, pp. 19 & 20.

7 BP, *Submission No. 16*, p. 7.

8 ANL, Submission No. 38, pp. 4 & 5.

9 ANL Container Line Pty Ltd, *Submission No. 38*, pp. 4 & 5.

10 For example see, Mr Peter Bremner, *Transcript 17 April 2008*, p. 38; and Mr Martin Byrne, *Transcript 17 April 2008*, p. 29.

Coasting trade licenses

3.10 Opinions about the licensing provisions of the Act focused on the conditions whereby a licence is granted. Specifically, there was discussion about the wage provision of section 288 and the subsidy provision of section 287.

Section 288

3.11 It was suggested that only requiring licensed vessels to pay Australian wages but not other Australian conditions violates the Act's intent.[11] Unions have argued that licences should only be granted to ships registered in Australia—effectively ensuring that the only foreign flagged ships operating on the Australian coast would be those under permit. For example, the MUA believes that the licensing provisions should be more prescriptive and recommends that in order to gain a license:

- the ship must be registered under the *Shipping Registration Act 1981*;
- the ship must be crewed by Australian nationals i.e. be Australian residents, or persons authorized to work in Australia;
- the Australian seafarers must be engaged under the terms of an Australian collective enterprise agreement; and
- the employer of Australian seafarers must be in compliance with the *Seafarers Rehabilitation and Compensation Act 1992*.[12]

3.12 The Australian Institute of Marine and Power Engineers (AIMPE) agrees with the MUA, noting that to be granted a coasting trade licence an applicant should meet the following requirements:

- ships licensed to participate in the Australian coastal shipping industry should be required to be registered under the *Shipping Registration Act 1981*;
- ships licensed to participate in the Australian coastal shipping trade should be managed and operated by an Australian citizen, an Australian resident or a corporate entity registered in Australia;
- all seafarers on board ships licensed to participate in the Australia coastal shipping trade should be Australian citizens, Australian residents or persons otherwise authorised to work in Australia and

11 Melissa Park MP, *Submission No. 37*, p. 6.

12 MUA, *Submission No. 45*, p. 43.

all such persons should possess appropriate maritime qualifications issued by Australia; and

- the owners, managers, operators, employers and the seafarers working on [licensed] ships should be subject to all of the normal Australian laws with respect to immigration, industrial relations, taxation, health and safety.[13]

Section 287

3.13 Rio Tinto expressed concern that the exclusion of vessels receiving a bonus or subsidy from a foreign government under this section inhibits participation in domestic shipping by denying Australian seafarers the opportunity to work in licensed vessels on the coast.[14] Rio Tinto noted that there are a number of vessels working on the Australian coast that are denied a licence because they are flagged in the United Kingdom and owned under a tonnage tax system which the Navigation Act considers to be a form of subsidy or bonus.[15]

Ministerial Guidelines

3.14 The permit and licensing provisions in Part VI of the Act are open to interpretation because of the Act's wording. Terms referring to availability and adequacy or subsidy and bonus, for example, are subjective and are not clearly defined in Part VI of the Act. To better guide Ministerial decision makers administering Part VI of the Act, *Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping* are issued by the Minister.

3.15 The Guidelines, however, may not have always provided the clarity of direction required by Ministerial decision makers when administering Part VI of the Act. It has been suggested that there are 'uncertainties, grey areas and qualitative interpretations which abound in the permit administration [that] need rectification'.[16] Ministerial Guidelines are reviewed and revised from time to time and previous revisions may have resulted in a 'liberalised administration of the permit guidelines'.[17]

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13 AIMPE, *Submission No. 35*, p. 8 & 9.
14 Rio Tinto, *Submission No. 60*, p. 2.
15 Rio Tinto, *Submission No. 60*, p. 2.
16 ASA, *Submission No. 29*, p. 72.
17 MUA, *Submission No. 45*, p. 28.

3.16 The Australian Shipowners Association (ASA) advised the Committee that it has participated with the Department in a review of the Ministerial Guidelines but the outcome 'did not overcome the difficulties inherent in the administration of the permit system'.[18]

3.17 New guidelines were issued effective 1 August 2008. Changes to the Guidelines include a new preamble articulating the Government's policy on coastal shipping as well as the following:

- applications for single and continuing voyage permits will be made available to all licensed ship operators, the Australian Shipowners Association and maritime unions - assisting the Department of Infrastructure to establish whether an Australian ship is available;
- details of single voyage permits issued, including the name of the ship, cargo, dates and ports of loading and discharge, will be published; and
- permit holders who load cargos that breach the terms of the permit will be required to provide a satisfactory explanation before future permits are issued.[19]

3.18 The Government has stated that it is 'committed to the fair administration of the permit system by increasing transparency and compliance to create a level playing field for the Australian shipping industry'.[20] It is expected that the recent changes to the Guidelines will assist in this regard; however, these changes do not address the inherent subjectiveness in the guidelines and the permit provisions in Part VI of the Act.

The financial costs

3.19 The arguments heard by the Committee, either in support of or against the permit system and the licensing provisions of Part VI of the Act, are focused, in part, on some of the issues already discussed, including the need for greater or less flexibility in the system and the Act's effect on the competitive neutrality of Australia's transport

18 ASA, *Submission No. 29*, p. 72.

19 Media Release, The Hon Anthony Albanese MP, Changes to Domestic Shipping Permits, 26 June 2008, http://www.minister.infrastructure.gov.au/aa/releases/2008/June/AA067_2008.htm, accessed 14 July 2008.

20 Media Release, The Hon Anthony Albanese MP, Changes to Domestic Shipping Permits, 26 June 2008, http://www.minister.infrastructure.gov.au/aa/releases/2008/June/AA067_2008.htm, accessed 14 July 2008.

modes. What has not yet been discussed in this report is the underlying theme of much of the discussions surrounding Part VI—financial cost.

3.20 The cost of replacing ships is very high at the present time and so the option to utilise permit ships or charter ships under licence rather than bear the cost of ship replacement has been a benefit to ship owners and shippers.[21]

3.21 A more liberal administration of the permit system has also meant that Australian shippers have had access to lower cost shipping services because foreign flagged vessels have cheaper operating costs—in particular labour costs. The Committee received evidence suggesting cost differentials between foreign and Australian crews can range between one and three million dollars per annum[22]:

> A vessel such as the Iron Chieftain, which is basically a 50,000-tonne self-unloading vessel—a big vessel—should cost around $6.9 million a year to run. Smaller vessels along the lines of the Goliath or the CSL Pacific lift about 25,000 tonnes and cost us $5.9 million a year to run. They are both Australian vessels. An ITF vessel—or the sister ship to the CSL Pacific or the Goliath—like the Stadacona costs $3.8 million. So on a like-for-like basis—vessel size—there is a $2 million gap.[23]

3.22 When discussing foreign versus Australian labour costs and the use of permits to address these costs, various arguments must be considered.

3.23 For example, it is often Australian conditions not wages that drive labour costs up. Australian crews accrue leave on the basis of 0.926 of a day for each day worked; this means that two people have to be employed for every job in an Australian ship.[24] While this might sound high, there are some issues to consider when examining the leave provisions for Australian crew:

- the leave available to Australian seafarers is a necessary condition of employment to retain persons in seagoing occupations and cannot realistically be reduced at a time when it is difficult to find experienced seafarers to work in ships;

21 CSR, *Submission No. 28*, p. 6.

22 ASA, *Submission No. 29*, p. 3.

23 Mr Christopher Sorenson, *Transcript 17 April 2008*, p. 105.

24 ASA, *Supplementary Submission No. 29.1*, p. 1.

- the leave factor is necessary to take into account the nature of seagoing employment: being confined to a ship, working in an isolated remote place;
- the leave factor in seagoing ships is less generous than the leave factor provided in the offshore oil and gas sector in which seafarers also find jobs; and
- the leave factor in Australian ships is probably not much different to the leave arrangements provided in mining and other remote engineering industrial activities in Australia.[25]

3.24 Counter-arguments suggest that:

- the leave factor is a remnant of industrial gains achieved by the maritime unions through industrial persuasion in a capital intensive industry and are unnecessarily high in comparison to Australian standards ashore;
- the leave factor exacerbates the shortage of seafarers; and
- the leave factor is in excess of all but the most generous terms and conditions of employment available in the international shipping industry.[26]

3.25 Furthermore, labour costs need not be the primary issue when considering the use of foreign shipping over Australian shipping. The Committee has been advised that competitiveness can overcome labour costs:

> …the operating philosophy of the company and the cargoes that it has access to can have a lot to do with the competitiveness of that company. I mentioned the Scandinavian countries, which have very high cost crews. Admittedly today there are fewer ships crewed with nationals from those countries; however, the way they operate is very clever.[27]

Conclusion

3.26 The Committee has canvassed various organisations seeking comment on their interpretations of Part VI of the Act. The Committee's questionnaire covered the following criteria in the Act:

25 ASA, *Supplementary Submission No. 29.1*, p. 2.

26 ASA, *Supplementary Submission No. 29.1*, p. 2.

27 Mr Peter Bremner, *Transcript 17 April 2008*, p. 42.

- ships in receipt of subsidies (s 287);
- Australian wages (s 288 (3)(a));
- availability (s 286 (1)(a));
- adequacy (s 286 (1)(b)); and
- public interest (s 286 (1)).

3.27 Responses to the Committee's questionnaire revealed only slight variances in interpretation of the Act's language. This would suggest that while the language could be better defined in the Act, it is in the application of the Act's Guidelines where the greatest potential for disagreement occurs. This supports evidence previously cited by the Committee, suggesting that the Guidelines contain 'uncertainties, grey areas and qualitative interpretations'.[28]

3.28 This debate highlights that fact that the Australian coastal shipping industry would be better served by clearer guidance reflected in the Navigation Act, its regulations and ministerial guidelines.

3.29 The current government's stated policy is to ensure the competitiveness and sustainability of the coastal shipping sector within Australia's domestic transport sector. Implicit within this statement is the expectation that when at all possible, Australian ships utilising Australian crew, being paid Australian wages and conditions should be employed in the carriage of domestic cargo, as the Navigation Act originally intended.

3.30 Clarification of the licensing and permitting provisions of Part VI of the Act, so that its language better reflects the Act's intent, is the first step towards achieving the Government's policy. This will allow the coastal shipping industry to develop and compete within Australia's domestic transport sector without facing direct competition from international permit ships, which were intended to fill a capacity gap in the Australian shipping task rather than be utilised in favour of Australian shipping.

3.31 The Committee is aware that in 2000, the DITRDLG completed a review of the *Navigation Act 1912*.[29] This review did not consider Part VI of the Act. Therefore, the Committee recommends that the Government complete the review of the *Navigation Act 1912,* and then amend Part VI in order to clarify the language in the Act. This will

28 ASA, *Submission No. 29*, p. 72.

29 DITRDLG, *Supplementary Submission No. 15.1*, p. 1.

better align coastal shipping legislation with government's policy to foster a viable coastal shipping industry in a competitive domestic transport sector.

3.32 The Committee expects that the detailed responses to this questionnaire, found in submissions 11.1, 29.2 and 53.1, will be useful for those reviewing Part VI and should be taken into consideration.

3.33 These processes should be coordinated by the Reform Implementation Group referenced in Recommendation 14 of this report, in order that coastal shipping reform is progressed consistently over established timelines.

Recommendation 2

3.34 **The Committee recommends that the Government complete the 2000 review of the *Navigation Act 1912* and then amend Part VI to clarify language in the Act. This will better align coastal shipping legislation with government's policy to foster a viable coastal shipping industry in a competitive domestic transport sector.**

Submissions 11.1, 29.2 and 53.1 to this inquiry should be taken under consideration.

This process should be coordinated by the Reform Implementation Group referenced in Recommendation 14 of this report, in order that coastal shipping reform is progressed consistently over established timelines.

3.35 The Ministerial Guidelines will then need to be tightened so that permits are once again used by shippers as a means of coping with fluctuations in demand, and short periods of increased demand where existing ship capacity falls short.[30]

3.36 The Committee recommends that the Government further amend the Ministerial Guidelines in order to clarify their language and better align the Guidelines with Government policy and any amendments made to the Navigation Act.

30 Mr Peter Bremner, *Transcript 17 April 2008*, p. 38.

3.37 Once again, it is important that reform of the Ministerial Guidelines is coordinated by the Reform Implementation Group referenced in Recommendation 14 of this report, in order that coastal shipping reform is progressed consistently over established timelines. Submissions 11.1, 29.2 and 53.1, may also be useful for those reviewing the Guidelines and should be taken into consideration.

3.38 The Committee is aware that governments are at liberty to change ministerial guidelines and it is concerned that future interpretations of the Ministerial Guidelines could create uncertainty and discord within the coastal shipping industry. Expanding the Regulations to include some previous Guidelines would provide certainty to industry and government and allow for a level of Parliamentary scrutiny— through the Senate Regulations and Ordinance Committee—that would reduce future interpretive flexibility within the Guidelines.

3.39 Therefore, in amending the Ministerial Guidelines, the Committee recommends that the Government consider whether some issues addressed within the Guidelines would be better articulated within the *Navigation (Coasting Trade) Regulations*.

Recommendation 3

3.40 **The Committee recommends that the Government further amend the *Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping* to clarify their language and better align the Guidelines with Government policy and any amendments to the Navigation Act and its Regulations.**

These processes should be coordinated by the Reform Implementation Group referenced in Recommendation 14 of this report, so that coastal shipping reform is progressed consistently over established timelines. Submissions 11.1, 29.2 and 53.1 to this inquiry should be taken under consideration.

In amending the Ministerial Guidelines, the Committee recommends that the Government consider whether some issues addressed within the Guidelines would be better articulated within the *Navigation (Coasting Trade) Regulations*.

3.41 The Committee received evidence from a number of sources calling for the introduction of a 'single national maritime jurisdiction covering all commercial vessels'.[31] It has been argued that separate permit systems in Queensland and Western Australia as well as varying state interpretations of the Uniform Shipping Laws Code are inefficiencies in the system that impact business.[32]

3.42 In regards to the Queensland and Western Australian permit systems, the Committee notes that Part VI of the Navigation Act:

> …can be extended under another provision of the Act to cover intrastate coastal trades where ships would normally operate under State/Northern Territory jurisdictions. Section 8AA of the Act provides an 'opt in' provision bringing a vessel within the ambit of the Act even when trading intrastate. A ship operator can exercise this option by applying to the Australian Maritime Safety Authority (AMSA).[33]

3.43 While submitting an application to AMSA under Section 8AA may be somewhat inefficient, that alone is not sufficient reason to create a single national maritime jurisdiction. Inefficiencies created by cross jurisdictional safety regulation may be a stronger argument for uniform implementation of maritime regulation:

> A vessel can leave Albany in Western Australian and go to Derby in Western Australia—some 3,500 miles—and the requirements for that vessel are far less than for the vessel we operate from Darwin to Kalumbaroo in Western Australia to a remote community—some 635 miles…Onboard the lifesaving and fire appliance equipment and radio communications are nearly double what that vessel would be that travels 3,500 miles.[34]

3.44 In 1999, the Council of Australian Governments (COAG) agreed to alter the jurisdictional basis for safety regulation of Australian trading ships from determination based on the current voyage pattern to determination based on the size of the ship (length/gross tonnage). The 2000 review of the Navigation Act supported these changes and

31 AIMPE, Submission No. 52, p. 4

32 Cement Industry Foundation, *Submission No. 6*, pp. 3 & 4; National Bulk Commodities Group, *Submission No. 10*, p. 7; Adelaide Brighton, *Submission No. 20*, p. 3; Mr Peter Hopton, *Transcript 21 May 2008*, p 31.

33 DITRDLG, *Submission No. 15*, p. 26.

34 Mr Peter Hopton, *Transcript 21 May 2008*, p 31.

recommended extending the safety and environmental protection regime to larger non-trading vessels.[35]

3.45 On 26 March 2008, COAG agreed to an implementation plan for the Business Regulation and Competition Working Group (BRCWG) that included a request that Australian Transport Council (ATC) consider and report back to the BRCWG on implementation of a single national approach to maritime safety for commercial vessels. The implementation plan indicates that ATC will decide on a preferred approach in November 2008, with agreement on the details in March 2009.[36]

3.46 The Committee expects that any amendments to the Navigation Act, its Regulations and Guidelines will take into account ATC recommendations regarding the implementation of a single national approach to maritime safety for commercial vessels.

Recommendation 4

3.47 **The Committee recommends that any amendments to the Navigation Act, its Regulations and Guidelines should take into account Australian Transport Council recommendations regarding the implementation of a single national approach to maritime safety for commercial vessels.**

Shipping Registration Act 1981

3.48 The *Shipping Registration Act 1981* was introduced because UNCLOS requires Australia to maintain a register of all ships flying the Australian flag (except for certain exempt ships, being mainly small ships). The Act requires that a vessel owned by an Australian entity be entered in the Australian register of ships, but foreign-owned vessels operating under permit are not deemed to be Australian and maintain foreign registry. The Act confers nationality on Australian ships and grants the right to fly the national colours; provides, in some situations, for the conferment of title in ships; and provides for the registration of mortgages.[37]

35 DITRDLG, *Submission No. 15*, p. 46.

36 DITRDLG, *Submission No. 15*, p. 46.

37 DITRDLG, *Submission No. 15*, p. 43.

3.49 The Committee received little evidence regarding the *Shipping Registration Act 1981*. Those who chose to comment on the Act specified two areas of concern:

- s 12 (compulsory registration); and
- s 12 (2) (registration exemption provision).

3.50 Section 12 of the Act requires all wholly or majority Australian-owned commercial vessels over twenty-four metres in length to be entered in the Australian Register of Ships.[38] It is the obligatory nature of the Act that concerns many maritime stakeholders in Australia.[39]

3.51 It has been argued that compulsory registration is an outdated concept based on the principle that there should be a link between a ships nationality of ownership and its registration. The ASA points out that 'this principle has lapsed internationally; with more that 50% of the world's fleet registered in places other than the nationality of the ships' owner'.[40] The reasons for this are economic. Many registries offer fiscal incentives that allow for greater international competitiveness. Australia's registry does not and because most ships operating continuously in coastal trades (and therefore licensed and imported and subject to Part II of the Navigation Act) are owned by Australian entities, compulsory registration renders these ships uncompetitive with foreign-owned and registered ships under permit, which are often in receipt of various fiscal and tax relief measures.[41]

3.52 Conversely, unions have argued that in keeping with the spirit of the Navigation Act, section 12 of the *Shipping Registration Act 1981* should not be amended and section 12 (2) should be repealed.[42] Section 12 (2) allows a ship operated by a foreign resident under a demise charter to be exempt from the registration provisions.

3.53 This is not a new debate. These issues were highlighted in a 1997 review of the *Shipping Registration Act 1981* undertaken by the Commonwealth as part of its Commonwealth Legislation Review

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38 *Shipping Registration Act 1981*, Section 12, http://www.austlii.edu.au/au/legis/cth/consol_act/sra1981254/s12.html, accessed 17 July 2008.

39 Sharp and Morris, *Independent Review of Australian Shipping: A Blueprint for Australian Shipping*, September 2003, p. 27.

40 ASA, *Submission No. 29*, pp. 67-68.

41 ASA, *Submission No. 29*, pp. 67-68.

42 AIMPE, *Submission No. 35*, p. 8; and MUA, *Submission No. 45*, p. 43.

Schedule—designed to investigate legislation which may restrict competition.[43] They were also noted in the IRAS report, which recommended an end to compulsory registration in order to take advantage of the initiatives discussed in the report.[44]

3.54 The Committee has been tasked with making recommendations on ways to enhance the competitiveness of the Australian coastal shipping sector, competitiveness in this case referring to the competition between shipping and other domestic freight modes. Removing compulsory registration may be an issue for future consideration but at present, the Committee is concerned that the removal of compulsory registration could lead to increased overseas registration at a time when Australia is attempting to develop its coastal shipping fleet.

3.55 However, compulsory registration under the *Shipping Registration Act 1981* should not be a tool by which Australian business is stifled. If Australian ships are to be registered in Australia, ship owners should have access to the kinds of incentives which they are currently only able to access via overseas registration.

Incentives

3.56 Australian governments have, in the past, introduced shipping reform packages comprising various incentives all intended to grow the industry. In 1987, the *Ships (Capital Grants) Act 1987* was introduced to provide capital assistance for the purchase of vessels, and in 1989 a package of reforms was developed by the Shipping Reform Task Force which included an extension to capital grants and accelerated depreciation.[45] These reforms had a positive impact on the shipping industry in Australia. For example, between 1988 and 1994, thirty-six new and efficient vessels were introduced into the Australian fleet, representing an investment of over AUD $1.6 billion.[46] European countries, as well, have introduced a variety of fiscal incentives to support and enhance their shipping industries.

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43 Department of Workplace Relations and Small Business, Australian Maritime Safety Authority and Bureau of Transport and Communications Economics, *Review of the Shipping Registration Act 1981*, December 1997, p. iii, http://www.infrastructure.gov.au/maritime/publications/, accessed 17 July 2008.

44 Sharp and Morris, *Independent Review of Australian Shipping: A Blueprint for Australian Shipping*, September 2003, p. 27.

45 MUA, *Submission No. 45*, p. 27.

46 ASA, *Submission No. 29*, p. 99.

3.57 Throughout this inquiry, stakeholders have recommended that any new reform measures introduced by Government should be accompanied by fiscal incentives designed to grow the industry. Two fiscal measures in particular were discussed at length—a tonnage tax and accelerated depreciation.

Tonnage tax

3.58 The introduction of a tonnage tax for Australian registered ships would allow companies the option of paying tax based on the tonnage of their ships rather than on the profits of their trade.[47] This is beneficial in years where ships have made a lot of money but can have a negative impact in years where ships do not. Recently, ships have been highly profitable, so a tonnage tax regime is considered to be of particular economic benefit.[48]

3.59 A tonnage tax has been introduced in several overseas jurisdictions including the UK, Belgium, Germany, Greece, Norway, Denmark and the USA.[49] In the UK, the tonnage tax regime (linked to a second register) was introduced to increase the number of UK registered ships and the UK's seafaring skills base by linking the tax to a requirement to train seafarers.[50] The tax has been successful in increasing the tonnage on the UK register and to a lesser extent the number of ships but it has not substantially increased the number of cadets due to an opt-out clause in the legislation.[51]

3.60 There is a general consensus across various maritime industry stakeholders that the introduction of a tonnage tax in Australia would have positive benefits for the industry. Both the AIMPE and MUA support an optional tonnage tax[52] and the ASA is of the opinion that a tonnage tax option should be available to companies operating ships which are 'strategically and commercially managed in Australia'.[53]

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47 DITRDLG, *Submission No. 15*, p. 48.

48 Capt. Brett Whiteoak, *Transcript 16 May 2008*, pp. 40-42.

49 DITRDLG, *Submission No. 15*, pp. 48 & 49.

50 Leggate and McConville, Centre for International Transport Management, London Metropolitan University, *Tonnage Tax: is it working?*, Maritime Policy and Management, April-June 2005, Volume 32, No. 2, pp. 177–186.

51 Leggate and McConville, Centre for International Transport Management, London Metropolitan University, *Tonnage Tax: is it working?*, Maritime Policy and Management, April-June 2005, Volume 32, No. 2, pp. 184–85.

52 AIMPE, *Submission No. 35*, p. 10; MUA, *Submission No. 45*, p. 49.

53 ASA, *Submission No. 29*, p. 58.

3.61 The benefits, it has been suggested, would be two-fold: ship owners would be encouraged to register and remain registered in Australia and, by linking the tax to training requirements, the cost of training seafarers would be partially alleviated.[54]

3.62 The IRAS report recommended that urgent consideration be given to the introduction of a tonnage tax.[55] That was in 2003 and the Committee is of the opinion that the need for such consideration has not diminished. The Australian Maritime Group (AMG) should therefore begin examining ways to introduce an optional tonnage tax regime in Australia that is linked to mandatory training requirements. Its introduction should then be coordinated with the implementation of other reforms recommended in this report.

Recommendation 5

3.63 **The Committee recommends that the Australian Maritime Group examine ways to introduce an optional tonnage tax regime in Australia that is linked to mandatory training requirements.**

The introduction of an optional tonnage tax should then be coordinated with the implementation of other reforms recommended in this report by the Reform Implementation Group referenced in Recommendation 14.

Accelerated depreciation

3.64 Australian ships are growing older and are not being replaced. Fiscal measures (including accelerated depreciation) available to Australian ship owners in the early 1990s were such that investment in new shipping was attractive. By 1994, the shipping industry in Australia had invested approximately 1.6 billion dollars in new shipping and as a result, Australia had one of the youngest fleets in the world with an average age of eight years. This is no longer the case. Accelerated

54 AMC, Synopsis: Maritime skills, shortages and training forum, *Exhibit No. 19*, p. 12.

55 Sharp and Morris, *Independent Review of Australian Shipping: A Blueprint for Australian Shipping*, September 2003, p. 34.

depreciation measures in Australia were terminated in 1996,[56] and in the ensuing 12 years 'the world started to pass us by'.[57]

3.65 There is an increasing demand and need for new tonnage in the Australian fleet and it has been suggested by a number of inquiry participants that the re-introduction of accelerated depreciation measures would assist in stimulating growth in the fleet.[58] This would have a positive impact on the size of the Australian fleet—with flow-on effects such as greater training opportunities—and introduce new vessels with modern designs which can improve on operating efficiencies and are more environmentally friendly.[59]

3.66 CSR indicated that a depreciation of twenty per cent over five years (the effective working life of a vessel) would be 'very attractive' and would reflect in lower finance charges and reduced lease costs.[60] If the first twenty per cent was allowed in the year before delivery then the incentive would be greater because this would assist with the down payment to the shipyard.[61]

3.67 The Treasury noted that the shift from accelerated depreciation arrangements to a uniform capital allowance approach was undertaken because it:

> …provided a more neutral—across various industries—outcome... because the then current accelerated depreciation arrangements had a built-in bias to capital-intensive industries [and it was believed that] it would be better to have a more neutral tax treatment in this area, rather than build in some implicit cost and possibly resource allocation bias through the depreciation arrangements.[62]

3.68 Competitive neutrality across transport modes is important but in reviewing the need to provide fiscal incentives to one industry over another, the current state of Australia's coastal fleet and the benefits which could be derived from an enhanced fleet should be taken into consideration. Furthermore, the Committee has been advised that

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56 MUA, *Submission No. 45*, p. 28.

57 Mr Lachlan Payne, *Transcript 21 April*, p. 8.

58 For example see, Mr Lachlan Payne, *Transcript 21 April*, p. 8; MUA, *Submission No. 45*, p. 28; Mr Martin Byrne, *Transcript 17 April 2008*, p. 30; CSR, *Submission No. 28*, p. 8; and SVITZER Australia, *Submission No. 23*, p. 8.

59 MUA, *Submission No. 45*, p. 28; and Mr Lachlan Payne, *Transcript 21 April*, p. 8.

60 CSR, *Submission No. 28*, p. 8

61 CSR, *Submission No. 28*, p. 8

62 Ms Laduzko, *Transcript 16 May 2008*, p. 77.

capping the effective life of an asset is something that exists in the road transport industry, where the cap on the effective life of long-distance trucks is approximately 7.5 years.[63]

3.69 Accelerated depreciation has been successfully employed in past reform efforts in Australia and the Committee sees no reason why it should not be utilised again. Therefore, the Committee recommends the re-introduction of accelerated depreciation arrangements as part of the Government's fiscal response to coastal shipping reform.

Recommendation 6

3.70 **The Committee recommends the re-introduction of accelerated depreciation arrangements.**

The re-introduction of accelerated depreciation arrangements should be coordinated with the implementation of other reforms recommended in this report by the Reform Implementation Group referenced in Recommendation 14.

Migration Act 1958

3.71 The *Migration Act 1958* stipulates that crew members (other than Australians) of ships entering Australia must hold a Maritime Crew Visa (MCV). If a ship entering Australia is deemed to be imported under the Customs Act then the crew must hold a 457 Visa not a MCV.[64] This means that non-Australian crew on permit ships must have a MCV while non-Australian crew on licensed or registered ships need a 457. To gain a 457 Visa, the occupation must be gazetted and the Department of Immigration and Citizenship must be satisfied that there is insufficient Australian labour available to perform the work to be undertaken by the person for whom the Visa is requested.[65]

3.72 The Committee has been advised that '457s are the exception rather than the rule in ships in Australia and Australian crews

63 Mr Lachlan Payne, *Transcript 21 April*, p. 8.

64 ASA, Submission No. 29, p. 66.

65 ASA, Submission No. 29, p. 66.

predominate;'[66] therefore, the Migration Act protects Australian jobs.[67]The Department of Immigration and Citizenship concurs,[68] noting that the 457 Visa is intended to allow employers the option of filling positions using skilled overseas workers, only if they have been unable to meet their skill needs from the Australian labour market.[69]

Foreign maintenance crews

3.73 This is a labour-cost debate. Concerns about the Migration Act have been raised because shippers and ship owners operating under licence and/or registration argue that, unlike permit vessels, they are not able to engage cheaper foreign maintenance crews (riding gangs) under MCVs:

> What we have is a situation where a permit vessel can engage a riding squad and use a maritime crew visa as an appropriate visa for those people on those vessels. What they will say to us is, 'You have a licensed vessel. That's imported. We'll need a 457 and currently a riding squad member is not an approved occupation on the 457 list.' So you have these two vessels doing similar trades and they are not in a position to engage international best practice.[70]

3.74 It has been proposed that 'the application of a maritime crew visa would be extended so that it would be an appropriate visa for riding squads working on licensed vessels'.[71]

3.75 The MUA believes that in regards to maintenance crews on coastal ships, 'if you are going to have additional maintenance capacity, then that should come out of the Australian workforce'.[72] It has also been pointed out that:

> CSL have used a combination involving 457 visas. They have brought tradespersons in to be able to supplement that. They have been able to attract tradespersons. They have not paid them a training rate; they have paid them a full integrated

66 ASA, Submission No. 29, p. 66.

67 ASA, Submission No. 29, p. 66.

68 Department of Immigration and Citizenship, Submission No. 49, p. 3.

69 Department of Immigration and Citizenship, Information booklet: *Sponsoring a temporary overseas employee to Australia*, p. 2, http://www.immi.gov.au/allforms/booklets/1154.pdf, accessed 18 July 2008.

70 Mr Westgarth, *Transcript 21 April 2008*, p. 50.

71 Mr Westgarth, *Transcript 21 April 2008*, p. 50.

72 Mr Paddy Crumlin, *Transcript 16 May 2008*, p. 36.

> rating rate. So there are solutions and there needs to be an area of policy as to labour development.[73]

3.76 Others have commented that maintenance projects rarely require specialist skills and such projects should represent an opportunity for Australian companies and labour to provide the service.[74]

3.77 The Committee is of the opinion that should the Government choose to accept Recommendation 2, and proceed to tighten the Guidelines surrounding the issuing of permits, then licensed and Australian registered ships will not regularly suffer the labour cost disadvantage which arises from competing with permit ships utilising foreign maintenance crews. It would also appear to the Committee that the need for maintenance crews on coastal ships represents an opportunity for Australian companies and potential employees.

Maritime security

3.78 Security concerns were raised in relation to the MCV and the transport of High Consequence Dangerous Goods (HCDG) by permit ships.

Seafarer security checks

3.79 The Committee received evidence suggesting that the MCV, introduced at a cost of $100 million dollars, 'has the potential to dilute the effects of the Maritime Security Identification Card (MSIC) and national security when used to replace Australian background checked workers on coastal voyages'[75]:

> …the MCV does not adequately plug the current security weakness that allows foreign seafarers to enter Australian waters and ports with security and background checks which do not match the standards applied to Australian seafarers and port workers. This is particularly so in relation to foreign seafarers employed on board ships to which a coastal trade permit has been issued.[76]

3.80 The Committee has been advised that 'every ship seeking entry to Australia is subject to a comprehensive risk assessment and must provide certain evidence about their flag, crew, cargo and security

73 Mr Paddy Crumlin, *Transcript 16 May 2008*, p. 36.

74 Mr John Asome, *Submission No. 46*, pp. 3-4.

75 MUA, *Submission No. 45*, p. 72.

76 MUA, *Submission No. 45*, p. 72.

operations'.[77] Australian seafarers and port workers undergo a MSIC background check while foreign crew are required to obtain a MCV for entry into Australia. To obtain a MCV, a ship provides a list of its crew with relevant identification details (authenticated by the Australian Customs Service) which are then run through various Immigration, ASIO and law enforcement checks.[78]

3.81 Should foreign seafarers require unsupervised access to Australian regulated maritime and offshore facilities, they are required to undergo a MSIC check as well.[79]

3.82 In regards to MSICs:

- crew without a MSIC that require access to offshore facilities can be supervised by a MSIC holder;
- background checking for the MSIC is done by AusCheck in the Attorney-General's Department and confirms identity and domestic criminal and intelligence checks; and
- an MSIC is valid for five years. There is a recovery process, so the MSIC-issuing bodies are also responsible for recovery of those cards once they have expired. As soon as the card expires the maritime body that issued it would then seek recovery of that card.[80]

3.83 The background checking is identical for Australians and foreigners wishing to gain unsupervised access to Australian regulated maritime and offshore facilities. Security standards for Australian seafarers and foreign seafarers only differ when they are onboard ship. In those instances, Australians have undergone an MSIC check while foreign seafarers have undergone security checks as part of the MSV process. The DITRDLG maintains that the 'security risk posed by foreign seafarers is, in part, mitigated by DIAC's MCV application process' although the risks can never be fully mitigated.[81]

3.84 Further to its discussion with representatives of the Office of Transport Security (DITRDLG), the Committee canvassed industry stakeholders asking their view on the adequacy of current background checks for foreign seafarers. The MUA reiterated its

77 DITRDLG, *Submission No. 15*, p. 44.
78 Ms Philippa Power and Mr Graham Hanna, *Transcript 16 May 2008*, pp. 15-18.
79 Ms Philippa Power and Mr Graham Hanna, *Transcript 16 May 2008*, pp. 15-18.
80 Ms Philippa Power and Mr Graham Hanna, *Transcript 16 May 2008*, pp. 15-18.
81 DITRDLG, *Submission No. 15*, p. 45.

position while the ASA and Shipping Australia was of the view that 'the current background check for foreign seafarers is more than adequate:'[82]

> [The MCV] is an appropriate measure which strikes a balance between Australia's national, security interests and the demands of the shipping industry. It allows the entry of foreign sea crew and enables continued, and effective shipping operations whist strengthening Australia's border integrity.[83]

3.85 In reviewing the evidence the Committee is satisfied that the current security regime covering foreign seafarers is adequate; however, given the substantial cost of the MCV program, the Committee recommends a one year review of the MCV be conducted to ensure the program is meeting its objectives.

Recommendation 7

3.86 **The Committee recommends a one year review of the Maritime Crew Visa be conducted to ensure the program is meeting its objectives.**

Carriage of High Consequence Dangerous Goods (HCDG) by permit ships

3.87 The MUA contends that permit applications should be denied when the specified cargo is HCDG, in particular security sensitive ammonium nitrate.[84] They believe that cargos such as security sensitive ammonium nitrate should only be carried in the coasting trade by Australian flagged vessels.[85]

3.88 Foreign flagged ships carrying ammonium nitrate are 'subject to Australia's state controlled ship inspection program and are required to comply with international safety standards'.[86]

3.89 The Committee is aware that Australia uses large amounts of ammonium nitrate. In 2007, 336,000 tonnes of ammonium nitrate were

82 Shipping Australia, *Supplementary Submission 11.1*, p. 6; and ASA, Supplementary Submission No. 29.2, p. 7.

83 Shipping Australia, *Supplementary Submission 11.1*, p. 6.

84 MUA, *Submission No 53.1*, p. 12.

85 MUA, *Submission No 53.1*, p. 12.

86 DITRDLG, *Submission No. 15*, p 44.

imported, of which 16,500 tonnes were transported around the Australian coast by foreign ships (seven voyages).[87] For security purposes, it would be preferable that dangerous good such as ammonium nitrate be transported by vessels registered in Australia, yet the availability of ammonium nitrate must not be hampered. Therefore, it will be necessary to continue allowing foreign vessels to transport shipments of ammonium nitrate until there are sufficient Australian vessels available for its transportation. Providing that the Ministerial Guidelines for the issuing of permits are tightened, the Committee expects that over time, fewer permit ships will be carrying HCDG on the coast.

The Seafarers' Rehabilitation and Compensation Act 1992 and *The Occupational Health and Safety (Marine Industry) Act 1993*

The Seafarers' Rehabilitation and Compensation Act 1992

3.90 The *Seafarers' Rehabilitation and Compensation Act 1992* (SRC Act) applies to vessels covered by Part II of the Navigation Act, including licensed vessels (under Part VI of the Navigation Act) operating on the Australian coast. The Seacare Scheme is the workers' compensation framework established by the SRC Act and is regulated by the Seacare Authority.

3.91 There is a problem with the interaction between the Navigation Act and the SRC Act. Under the SRC 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 SRC 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.[88] However, world-wide insurers will not provide cover for employers whose employees are subject to the SRC Act. Additional insurance must be sought, making insurance premiums higher for Australian operators.[89] In some instances, this problem has resulted in

87 DITRDLG, *Submission No. 15*, p 44.

88 Department of Education, Employment and Workplace Relations, *Submission No. 48*, pp 4-5.

89 ASA, *Submission No. 29*, p. 67.

a situation where a ship has been granted a coasting trade licence but the employer cannot comply with its obligations under the SRC Act.[90]

3.92 Permit vessels operating on the coast are covered by different insurance which incurs less expensive premiums than those applied by the general insurance industry to employers of crews in ships covered by the SRC Act.[91] It is argued that the financial costs associated with the SRC Act create a cost differential between licensed and permit ships resulting in an absence of competitive neutrality between the two.

3.93 The MUA has suggested that the SRC Act is in need of various reforms including the reduction of insurance premium costs to employers and the introduction of greater transparency of insurance arrangements.[92]

The Occupational Health and Safety (Marine Industry) Act 1993

3.94 There are similar cost concerns in regards to the *Occupational Health and Safety (Marine Industry) Act 1993* (the OH&S (MI) Act). Like the SRC Act, the OH&S (MI) Act applies to vessels covered by Part II of the Navigation Act, including licensed vessels (under Part VI of the Navigation Act) operating on the Australian coast.

3.95 It is argued that licensed vessels are subject to a higher OH&S standard than permit vessels, which must comply with the IMO, International Safety Management Code, and therefore the operating costs of a licensed ship are higher than those of a permit vessel.[93]

3.96 These issues were addressed in the IRAS Report and considered in a series of legislative reviews by the Seacare Authority in 2002 and 2003.[94] The Committee is also aware that the current government has considered the need for a review of the Seacare Scheme.[95]

3.97 If, as it has been suggested, the SRC Act and the OH&S (MI) Act are impacting negatively on the Australian coastal shipping sector, then

90 Department of Education, Employment and Workplace Relations (DEEWR), *Submission No. 48*, pp 4-5.

91 ASA, *Submission No. 29*, p. 67.

92 MUA, *Submission No. 45*, pp. 13-14.

93 ASA, *Submission No. 29*, p. 67.

94 DEEWR, *Exhibit No. 20*.

95 The Hon Julia Gillard MP, speech to the Maritime Union of Australia National Conference, 9 April 2008, <http://mediacentre.dewr.gov.au/mediacentre/gillard/releases/maritimeunionofaustralianationalconference.htm>, accessed 22 July 2008.

there is clearly a need to amend the Acts. The Seacare Authority began the amendment process six years ago and its reviews should serve as a solid basis for further consultation prior to enacting legislative reform. The Committee recommends that the Reform Implementation Group referenced in Recommendation 14 of this report be charged with overseeing further review of both Acts. This review should be undertaken with the intention of supplementing and updating existing reform recommendations and therefore should be completed expeditiously. Timelines for the review should be set by the Reform Implementation Group and be consistent with its established timelines for the implementation of coastal shipping reform. Both Acts should then be amended.

Recommendation 8

3.98 **The Committee recommends that the Reform Implementation Group referenced in Recommendation 14 of this report be charged with overseeing further review of the *Seafarers' Rehabilitation and Compensation Act 1992* and the *Occupational Health and Safety (Marine Industry) Act 1993*. This review should be undertaken with the intention of supplementing and updating existing reform recommendations and therefore should be completed expeditiously. Timelines for the review should be set by the Reform Implementation Group and be consistent with its established timelines for the implementation of coastal shipping reform. Both Acts should then be amended.**

The Workplace Relations Act 1996

3.99 Ships operating continuously on the Australian coast under licence must employ seafarers who are 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".[96] This is not applied to seafarers on permit ships.

3.100 In 2003, the High Court held that the Australian Industrial Relations Commission (AIRC) could hear matters dealing with award coverage

96 Department of Education, Employment and Workplace Relations, *Submission No. 48*, p. 3.

for foreign crews on permit ships.[97] The AIRC was of the opinion that 'applying the award to [permit] ships was not consistent with the objectives of the workplace relations legislation' and may discourage productivity. The AIRC did not, however, rule out any form of award recognition'.[98]

3.101 Subsequently, under the *Workplace Relations Amendment (Work Choices) Act 2005,* the WR Act was amended and with the introduction of the Regulations for Work Choices (Regulation 1.1):

> ...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.

3.102 The MUA has recommended to the Committee the repeal of those provisions in the Work Choices legislation which exclude foreign crew on permit ships from the WR Act and state and territory industrial relations laws.[99]

3.103 The Maritime Industry Seagoing Award is currently undergoing a modernisation process with a new award expected to be in place by 2010;[100] however, a new award would not encompass permit ships and their crew unless the current regulations are amended or repealed.[101]

3.104 The Committee sought advice on the possible impact of repealing Regulation 1.1[102] and was advised that:

> In the event that the reg were repealed, it is probable that the permit ships would then come under the scope of the Workplace Relations Act and, as a consequence, they would be subject to the applicable safety net.[103]

3.105 Extending the award to permit ships could result in higher costs for those vessels and therefore higher costs for users of permit shipping. Given the high level of permits currently being issued under the

97 Department of Education, Employment and Workplace Relations, *Submission No. 48*, p. 3.
98 ASA, Supplementary Submission 29.2, p. 2.
99 MUA, *Submission No. 45*, p. 44.
100 Mr Michael Maynard, *Transcript 15 May 2008*, p. 4.
101 Mr Michael Maynard, *Transcript 15 May 2008*, p. 4.
102 Ms Catherine King, *Transcript 15 May 2008*, p. 4.
103 Mr Michael Maynard, *Transcript 15 May 2008*, p. 4.

existing guidelines, an increase in shipping costs through the removal of Regulation 1.1 could have negative economic implications. It is also not clear that increasing the costs of foreign shipping will make Australian shipping more competitive.[104]

3.106 However, the Committee is hopeful that a reformed coastal shipping regulatory framework will result in a gradual increase in Australian ships operating on the coast and a decrease in the use of permit vessels. If such a decrease were to occur, then it would be beneficial to gradually phase out Regulation 1.1 and allow for the extension of the Maritime Industry Seagoing Award to seafarers on permit vessels.

104 ASA, Supplementary Submission No. 29.2, p. 3.