2008

Coastal Shipping Policy and Regulation Inquiry

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

Australian Shipowners Association

Answers to questions in writing - Cabotage

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Ships in receipt of subsidies (s 287 of the Navigation Act)

1.4 It is an offence for vessels operating under license to receive, directly or indirectly, any subsidy or bonus from the Government of a country other than Australia. There is no definition of "subsidy" or "bonus".

- *How should it be defined?*

ASA believes that this clause:

- Creates significant uncertainty for vessel operators.
- Provides no benefit to any party.
- Provides no protection to any party.
- Is counter-productive in serving to inhibit the growth of coastal shipping.
- Contributes in no positive way to the application of the *Navigation Act 1912* (Cth) (the Act).

The implications of creating a definition could be widespread and counter- productive to the intent of the section and the Act.

ASA believes that this section of the Act should be deleted. Only positive outcomes would result from doing so by removing the current uncertainty.

Australian wages (s288 (3)(a))

1.5 "the seamen employed on the [licensed] ship shall be paid wages in accordance with this Part"; (s289 (1)) "Every seaman employed on a ship engaged in any part of the coasting trade shall…be paid, for the period during which the ship is so engaged, wages at the current rates ruling in Australia for seamen employed in that part of the coasting trade"; and (s292) An Australian Pay and Classification Scale (or APCS) or a transitional award within the meaning of the Workplace Relations Act 1996 which is binding on or applicable to seamen employed in any part of the coasting trade is prima facie evidence of the rates of wages in Australia for those seamen."

- *Should this be restricted to pay in hand or include other entitlements such as leave loading?*

This question is particularly difficult to answer in isolation of a raft of other issues.

It is not the desire of ASA to see the cost structures of ships pegged any higher than they need to be. Our answer therefore outlines the relativity between the various ships carrying coastal cargo around Australia.

What do permit ships pay and why?
A series of relevant events took place in 2002-2003, a précis of which is provided below:

In 2002-2003 Australian Industrial Relations Commission (AIRC) considered whether Australian industrial regulation applied to the employers of foreign crews in certain ships operating in Australia regularly using permits.

The AIRC declined to rope-in the employer to the Maritime Industry Seagoing Award largely because of "inappropriate" Australian work practices.

The AIRC Commissioner felt that applying the award to the ships would discourage productivity, and discouraging productivity was not consistent with the objectives of the work place relations legislation.

The work practices referred to 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 say 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".

However, the Commissioner did not rule out any form of award regulation; he said that an award that did not contain or encourage inappropriate provisions or work practices "might very well" conform with the Commission's principles.

Two points that came out of the exercise:
First, the Commission seemed to be saying that terms and conditions embodied in the Maritime Industry Seagoing Award, approved by the AIRC as a safety net provision placed under Enterprise Bargaining Agreements, was not appropriate for crews on foreign ships operating with permits but was appropriate (since the AIRC itself had approved the MISA terms) for Australian ships with Australian crews.

Secondly, the cost structures of foreign ships operating in Australia were being pegged at a lower level than the cost structures of Australian ships operating in Australia.

Foreign licensed ships relative to Australian manned ships and Permit ships
These rates are less than the going EBA rates and are more than the AIRC was prepared to countenance for application to maritime employees in permit ships.

There is no doubt that the existing arrangements perpetuate a competitive disadvantage of operating an Australian ship with Australian crew. Given the narrative provided above however it is not at all apparent that the answer to making Australians more competitive is to increase the cost of foreign ships by including other entitlements beyond wages. Indeed a partial answer appears to lay in a review of the tax treatment of Australian seafarer wages, which may result in those wages being cost competitive when compared with international crew. A necessary stimulus for the Australian coastal shipping industry.

Availability (s286(1)(a))

1.6 "that no licensed ship is available for the service" - which is a criteria for granting permits

- *How many days on either side of a shippers designated loading date should a licensed vessel be considered to be available?*

It is the ASA view that the current three day window provides adequate flexibility for all parties.

Any expansion beyond three days would make the practicable and commercial world of shipping very difficult.

- *Should the date specified be the commencement of loading or sailing?[Some vessels may take up to 5 days to load – more if a ship has to leave the berth for a period.]*

The date of commencement of loading should be used. There are many reasons why delays might be experienced during the loading of cargo, many of which would be unforseen. The date of arrival to load is as vital for operations (to clear the wharf/stockpile/empty storage tanks etc - see also the comments provided below in response to questions of Adequacy relating to ability to carry the cargo on a single voyage) as ensuring the vessel has sailed by a certain date to make sure they arrive at/on time at the discharge port.

The occurrence of a ship leaving the berth for a period after the commencement of loading occurs in exceptional, unintentional circumstances, only.

- *Is availability to mean a whole voyage or a particular segment of a voyage? [For example a shipper may require cargo to be shipped from Sydney to Fremantle with some of it to be discharged in Melbourne.]*

The parcelling of cargo as described in the example influences the economy of shipping that cargo and as such the whole voyage needs be 'available' or else the economy of the shipment is likely to be altered.

- *Should holders of CVPs be required to check with licensed operators at each time of loading to ensure a licensed vessel is not available?*

The operators of CVPs the users of these services need certainty. The holder of a CVP should not be required to recheck for licensed operators.

Adequacy (s286(1)(b)

1.7 "that the service as carried out by a licensed ship or ships is inadequate to the needs of such port or ports" - which is also a criteria for granting permits

- *Should price be a factor in determining adequacy?*

Price is a significant factor when determining how goods are to be moved.

The determination of price is an incredibly complex issue and entire specialist sections of the industry are employed to deal issues of price within the market.

The current situation in Australia involves several external influences such as the ship owning and operating environment in Australia and the cabotage system, which impact on the ability of the market to ensure appropriate pricing.

The ship owning and operating environment in Australia imposes costs on ship owning businesses which overseas shipowners are not required to bear. For example, overseas owners have access to more favorable taxation treatment (both corporate tax and employee tax) and mixed crews (access to cheaper labour) while in Australia further additional costs are imposed on Australian operators under the Seafarers Rehabilitation and Compensation regime, increased security requirements, etc.

It is therefore not possible for an Australian ship to compete with a foreign ship and hence a price differential eventuates. It is ASA's view that this need not be the case and that there are significant advantages for Australia by aligning the operating environment within Australia with those used overseas. If such changes were made this issue would resolve itself as the artificial influences would no longer exist.

While the situation for an Australian ship owner or operator remains as it is at the moment, the price differential will also remain, and this vexed question will continue to be debated.

In the current operating environment it is ASA's strong view that price should not be a factor in determining adequacy under the Ministerial Guidelines. To have such determinations made without the specialist expertise used within the market would be to necessarily artificially simplify and differences in price between ships. The application of some arbitrary factor, as we understand has been applied in the past, may bear little resemblance to the current market or the operational costs for the ships.

Price is of critical importance and must be addressed however it is our belief that the Navigation Act is not the correct legislative instrument for determinations of price.

Appropriate mechanisms for price considerations should be available under some other legislative arrangement where particular expertise is available on the complex issues of pricing.

ASA would welcome the opportunity to be involved in determining the most appropriate legislative instrument or government process to undertake any consideration of pricing issues.

ASA believes that the real solution to this issue exists in fixing the underlying causes of the cost differential that make a licensed ship more expensive, as outlined above.

- *Should a licensed vessel be considered adequate if it cannot carry the cargo in a single voyage? [For example a shipper may wish to move a cargo of 50,000 tonnes and a licensed ship has a capacity of 30,000 tonnes so it would need to make two voyages to move the cargo.]*

It is often critical to free the space at the point of loading (either remove the stockpile or empty the storage tank) to allow production to continue further upstream. To this end, it is usually important that the entire 50,000 tonnes, in this example, is removed at one time.

If the requirement of the shipper is that the cargo be moved in one voyage then this should be what is required by either a licensed vessel or a permit vessel.

- *Should a licensed ship offering to transport cargo on an open deck be considered adequate when a shipper would prefer that the cargo be shipped below deck (i.e. protected from the weather)?*

No, this constitutes the reasonable needs of shipper, which in all likelihood would extend to insurance issues associated with such a request.

- *Should a licensed ship offering lift on/lift capabilities only be considered adequate where a shipper stipulates RO/RO (roll on/roll off)? [Some shippers of vehicles prefer/stipulate RO/RO shipment to avoid potential damage.]*

Again, ASA believes this constitutes the reasonable needs of the shipper.

- *Should a licensed ship be considered adequate if the operator cannot supply equipment to the shipper?*

This may depend on the needs of the shipper and common market practice.

If the application from the shipper specifies that the provision of equipment, specialist or otherwise, is part of their requirement then a licensed or permit ship should have this equipment in order to be deemed adequate. For instance, the requirement for a

geared ship or a self-unloading ship would clearly need to be met by the licensed or permit ship.

The question of the provision of empty containers is perhaps not as straight forward since the 'equipment' is not fixed to the ship. It could be said however that this equipment is nevertheless essential ships equipment since the cargo cannot be loaded without it, and therefore should be provided by the ship.

If the requirement of the shipper is that empty containers are supplied, and this is part of the permit application, then provision of empty containers should be a requirement that is sought from both licensed or permit ships.

- *Should a licensed ship be considered adequate if the foreign vessel offers freight free cargo shipment?*

This is a matter of price and as outlined in our response above ASA believes that this should be considered by a different legislative instrument / governance process.

Public interest (s286 (1))

1.8 *"the Minister is satisfied that it is desirable in the public interest that unlicensed ships be allowed to engage in that trade" - which is also a criteria for granting permits. Currently this is confined to safety and security issues.*

1.9 *In respect of safety:*

- *Should a vessel that has been detained previously under a Port State Control (PSC) inspection not be considered for permits even though all the detention causing items have been fixed?*

A pattern or history of detentions should be cause for concern for any ship, licensed or otherwise. The system for granting permits and licenses should ensure that only safe ships participate in the carriage of coastal cargoes.

Industry is able to identify acceptable standards for ships and several systems have been developed within the industry to assist in the selection process for quality ships, for example RightShip and SIRE.

Where these systems are used, the risk factors have been assessed to enable decisions to be made on whether a ship is suitable or not. These or similar systems should be the primary source of risk assessment undertaken by the industry and/or the department when considering the suitability of a particular ship.

- *How long after a detention should a vessel not be considered for permits?*

Please refer to the answer above – the result of professional risk assessment systems should be used to determine if the ship is safe or not.

- *Should tankers carry non-fuel products such as molasses and benign chemicals be subject to the same requirement for an OCIMF inspection report? [The Oil Companies International Marine Forum (OCIMF) is a voluntary association of oil companies having an interest in the shipment of crude oil and oil products. They have a rigorous system of inspections for oil tankers.]*

ASA do not believe that the risks associated with such cargoes warrant an OCIMF inspection.

1.10 In respect of security:

- *How adequate are current background checks for foreign seafarers?*

We believe that the existing background checks for foreign seafarers are adequate.

All foreign seafarers entering Australia must now hold a Maritime Crew Visa (MCV) which requires that the seafarers undergo the same background checks as any other person entering the country.

This requirement is more stringent than requirements elsewhere in the world (with the exception of the USA which has a similar visa requirement) of the International Labour Organisation (ILO) requirement for a seafarer identity document.