

Coastal Shipping Inquiry

Introduction

Shipping Australia agrees that as with most regulatory legislation there is always an issue of interpretation but at least in this sense we have the ministerial guidelines as well as a very long period of convention in terms of how the legislation and regulations have been interpreted in practice.

It is in this context that we address the following questions.

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

1.4 It is an offence for vessels operating under licence 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?

SAL is not aware that this has really been an issue in the past as there is a general understanding of what 'subsidy' or 'bonus' means and we are not aware there has been any ambiguity in terms of the word 'subsidy' but if there is going to be amendments there could be deletion of the word 'bonus' as, presumably it could be incorporated in the understanding of what a subsidy means. If it is to be defined, it should relate purely to a subsidy in terms of reducing the operating costs of the beneficiary provided by a Government of a country other than Australia.

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 loadings?

In Shipping Australia's view that Act should not try to address all the differing methods how a shipowner/ship operator pays for its crew outside actual wages and entitlements such as leave loadings is a good case in point because it is not, to our knowledge found in many countries and it is our understanding that current Australian seamen's wages incorporate all leave entitlements with no leave loading on top of these wages. In addition, there would be the complicating factor on how one would determine the actual leave arrangements to which it would apply to part of a coastal voyage by an international operator that was licensed which would only spend a relatively short time on the Australian coast carrying Australian domestic cargo. In essence, we feel that the relative sections quoted above cover the actual payment of the Australian wages.

Availability (s 286 (I)(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 shipper's designated loading date should a licensed vessel be considered to be available?

In SAL's view it is very important to meet the requirements of the consignee or consignor for certainty in respect of forward planning and the licensed operator should be required to publish a sailing schedule when practical, two weeks in advance and this should be specifically stated in regulations.

SAL is of the opinion that if the scheduled sailing (as defined above) of a licensed operator falls outside the three days before commencement of loading or the three days after, than that set schedule date, then the permit holder should be able to accept the cargo from a shipper.

- 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 specified should be the commencement of loading.

- 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.]

In the spirit of the application of the Act, in SAL's view 'availability' is to be determined by the requirements of the shipper for each individual port.

- Should holders of Continuing Voyage Permits (which cover a period of up to 3 months) be required to check with licensed operators at each time of loading to ensure a licensed vessel is not available?

To check each time is a cumbersome process and checking the latest schedule (as required) by amended regulation regarding the availability of a licensed vessel to ascertain it's availability should be sufficient. As a practicable approach, a copy of that schedule and the date it was downloaded could be provided to the Department as proof of checking. No other checking should be required.

Adequacy (s286 (I)(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?

The question of adequacy of carriage to meet shipper's requirements should be clearly enunciated in the ministerial guidelines. Shipper's requirements are often based on a number of factors eg. transit time, equipment to be provided, costs etc. We note that the current practice is for the shipper to make representation direct to the Department if the licensed vessel is considered inadequate. A more robust definition of 'adequacy' could avoid this requirement. Nevertheless, price will be a determining factor. There is no argument that shipping is the most environmentally friendly form of transport per tonne/kilometre of cargo carried. In our view carriage of our coastal domestic cargo should be increased but there is no doubt that any increase in freight costs will naturally lead to vessels losing their market share to the detriment of the environment and presumably to the benefit of land transport.

- 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 tomes and a licensed ship has a capacity of 30,000 tomes so it would need to make two voyages to move the cargo.]

It is our strong view that shipper's requirements should be met by the cargo carrying capability of the licensed vessel. Efficiency of any vessel offered must be part of the consideration. There should be a degree of certainty of interpretation that should prevent future misunderstanding.

- 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)?

It is very important to meet shipper's requirements and their preferences and in addition carrying some cargo on deck would be totally unsuitable.

- 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.]

For some cargo clearly lift on/lift off capabilities could result in possible damage but again shippers requirements should be met in this instance and clearly cargo protection and efficient movement of the cargo must be of paramount importance.

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

It is not clear what is meant by equipment in this instance as containers are normally considered part and parcel of the ship's equipment but if the ship is relying on the consignor or consignee to provide eg. shipper owned containers then it could be adequate in some particular circumstances. Again if shippers requirements are for the ship to provide containers then there must be a question over the adequacy of the licensed vessel.

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

This appears to be a very hypothetical question as we are unaware of any foreign vessel giving a freight free facility to a shipper for the carriage of domestic cargo. Clearly there is nothing wrong with marginally costed cargo to assist the competitiveness of coastal shipping but a freight free facility would be an entirely different matter and SAL would not support any proposition that could give rise to allegations of predatory pricing.

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? [The Australian Maritime Safety Authority (AMSA) detains vessels through PSC inspections for serious safety deficiencies – ships continued to be detained until the deficiencies are fixed.]

All ships are liable for inspection by the Australian Maritime Safety Authority under its Port State Control programme. A vessel is issued with a deficiency notice by AMSA irrespective of whether the ship sails on schedule or is detained beyond its scheduled sailing time. Quite often vessels issued with deficiency notices rectify those deficiencies and sail on schedule, that is when the rectification is minor in nature and can be successfully completed in the time the vessel is in port. It would be unreasonable to say these vessels should not be issued with a permit in the future.

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

Once the deficiency has been rectified we see no reason why such a vessel could be not considered for permits in the future. Administration of the coasting trade provisions must be made more effective whilst ensuring the safety of crews and vessels and protection of the Australian marine environment are not reduced. We agree that it would not be in the public interest to allow vessels with a continued poor safety or environmental protection standards to carry coastal cargo under permits. Consideration could be given to analysing the degree of the threat to safety and environment that would have been caused by a major deficiency.

- Should tankers carry nonfuel 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.]

We understand that most if not all tanker vessels that carry cargo around the coast are subject to OCIMF inspection standards by the major traders in Australia and we do not seek to change the current arrangements.

In respect of security:

- How adequate are current background checks for foreign seafarers? [There is extensive background checking for Australian seafarers - should there be similar checking for foreign seafarers engaging in the coastal trades? - or should the background checking that is applied to foreign seafarers coming to Australian ports with international cargoes be sufficient?]

The Australian Government strengthened Australia's border security at the sea border with the introduction of the Immigration Amendment (Maritime Crew) Act 2007, introducing a new visa for foreign sea crew, bringing it into line with visa arrangements for most other visitors to Australia. From January 1 2008, it has been mandatory for foreign sea crew who travel to Australia on commercial vessels to hold a Maritime Crew Visa (MCV). It allows security checks to occur before crew are granted a visa to enter Australia. It 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 whilst strengthening Australia's border integrity.

From January 1 2008, crew must hold a valid national passport, an MCV granted against the same passport and another document that establishes the crew member's employment on the vessel, such as a crew list, articles, seaman's book or contract. Foreign crew who fail to meet the above requirements may be restricted on board the vessel. The operator, master, charterer or agent may also be liable for a fine of \$5,000 for each person who is refused immigration clearance.

The previous Government provided a considerable amount of funds to the Department of Immigration, the Australian Security Intelligence Organisation and the Australian Customs Service for enhanced IT systems and employment of additional staff to enforce the new provisions. The extra funding allowed Customs to deploy an additional 66 officers at key shipping ports around Australia.

SAL is of the firm view that the current background check for foreign seafarers is more than adequate. It must be pointed out that the only other country that requires a MCV is the US.

