Submission 028
Received 20/04/2012

SD

Established 1970
www.australianshipping.com.au

ABN 94 004 805 949
AUSTRALIAN SHIPPING CONSULTANTS PTY LTD

20 April 2012

The Secretary
Standing Committee of Infrastructure
And Communications
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600

Inquiry into the Coastal Trading (Revitalising Australian Shipping) Bill 2012 and related bills

In response to the Committee's invitation dated 29 March 2012, the undersigned begs to submit the following views and recommendations in regard to the above, but with particular emphasis upon the Coastal Trading Bill, as presented to Parliament. In so doing, I also direct the Committee's attention to two earlier submissions made by the undersigned, of which copies are attached hereto for ready reference, and avoidance of repetition.

By way of introduction and identification, the undersigned is the proprietor of Australian Shipping Consultants Pty Ltd, an independent Consultancy specialising in providing outsourcing services to Industry regarding chartering and operations of ships, as well as other related areas within our expertise. We are in our 42nd year of operation with track record involvements in all areas of domestic and export shipping activities.
The undersigned has taken a keen and pro-active involvement over the years in the various policy initiatives and subsequent enactments and adopted procedures by respective Federal administrations relating to Shipping, ever with the aim of presenting views and opinions reflecting the realities of commercial and market driven cargo service needs, and thereby an acknowledgement always, that **shipping is the server of cargo**, not the other way around, a ground rule drummed into the undersigned in his early career with The Maersk Group, now the world's largest **shipowning** organisation. The acknowledgement of this principle, which in a wider sense, in turn translates into Shipping being a provider of **services in the general Public Interest** (judged by the same norms as other types of services by way of efficiency and cost effectiveness, forming part of private enterprise).
It is this philosophy which has guided the undersigned's involvements, and expressed opinions, also in the current Shipping Reform process.

SUITE 14
45-51 RINGWOOD STREET
RINGWOOD, VIC
AUSTRALIA 3134

P.O. BOX 716
RINGWOOD, VIC
AUSTRALIA 3134

TELEPHONE: (03) 9847 0288
FAX: (03) 9870 1866
EMAIL: austship@australianshipping.com.au

a) Cabotage

From the outset, the undersigned supports the retention of Cabotage (wholly appropriate in principle, now as before for and Island Continent) – but not in a manner which sets out to turn back the clock to the era of "closed coast for foreign shipping", a practice condoned but never actually intended by the original, and as of now still valid, cabotage provisions of the Navigation Act 1912, which in Part VI – The Coasting Trade – allows for granting of permits for unlicensed ships (to engage) :

Section 286. (1) Where it can be shown to the satisfaction of the Minister in regard to the coasting trade with any port or between any ports in the Commonwealth or in the Territories:
(a) that no licensed ship is available for the service; or
(b) that the service as carried out by a licensed ship or ships is inadequate to the needs of such port or ports;
and the Minister is satisfied that it is desirable in the public interest that unlicensed ships be allowed to engage in that trade, he may grant permits to unlicensed ships to do so, either unconditionally or subject to such conditions as he thinks fit to impose.

In 1912, as it ought to be still today, it was acknowledged, and appropriately provided for in the legislation, if licensed ships were not available or adequate, and if it was desirable in the **Public Interest (= Cargo Interest)**, then there must by all logic and right be freedom to engage an appropriately available and suitable unlicensed (=foreign) ship to perform the shipper required task. This has been, and remains now as it must continue into the future, a fundamental entitlement essential to the needs of commodity trade on the Coast, in the Public Interest.

The Coastal Trading Bill 2012

As expressed in earlier submissions, the undersigned has always been opposed to the abolishment of the **concept : "the Single Voyage"** as a defining basis for seeking and obtaining right to procure the services of an unlicensed (=foreign) ship – a concept definition which has worked to all parties satisfaction for now 100 years, and by its restrictive perspective (in determining cargo size, ports and above all timing) has proven effective and by it basic premise served the interest of both the infrequent, and by extension to the Continuous Voyage (Permit) also provided for repeat voyages, but still under the controlling criteria of the Single Voyage Concept. This concept also ensured absolute control of cargo dispositions i.e. a party applying for a voyage permit could only do so, if so authorized by the controlling cargo interest, by way of a confirmed booking or formal charter agreement.

There is no compelling reasons, for any practical or administrative purposes, to do away with the : Single Voyage Concept – indeed it is demonstrably ill

conceived, and will only serve to complicate procedural arrangements, and far worse, impose impossible restrictions effectively causing constraint of Trade.

This concern is widely shared by all Cargo Interests, and generally espoused during the Shipping Reform consultative process, but regrettably so far to no avail.

It became apparent that current Bill drafting, purposely expunging the Single Voyage concept, was by way of political direction, seemingly in response to emotive views expressed especially by union interests, but also some Shipping Industry parties, denouncing the past and current Permit System as being: “infamous and a rort..” and therefore seen as an obstacle to the services, and above all expansion, of licensed shipping on the Coast. These latter views are not supported by the undersigned.

By adoption of the current wording of the Bill, an applicant for a **Temporary License** must demonstrate a requirement for **5 (Five) voyages – as a prescribed Minimum Criterion – and any lesser numbers of voyages would fail to qualify.**

This was not in the original draft but emerged subsequently, by some unknown party input – and as such can only be described as wholly inappropriate and unworkable in practice – in that there are many requirements, not only for the Single Voyage (Cargo), but indeed numbers of Voyages (Cargoes) less than an arbitrary 5 (Five) in number, and are these to be precluded, by legislation, from access to unlicensed (=foreign) ships? Discrimination, and even a breach of Natural Justice is suggested!

If this minimum criterion is retained, it would inevitably lead to applicants with less voyages providing fictitious numbers in order to qualify – and then subsequently claiming “circumstances beyond their control” as reason for a lesser than 5 Voyages actually materializing.

The potential for abuse of the system in pursuit of cargoes is there for less scrupulous shipping operators to apply for voyages covering cargoes for which they have no contractual right (by way of shipper booking or charter), and this could work against the real shipper directly – and there is even a prospective of operators “trading in Temporary Licences”. The lack of prescriptive demands for evidence of “cargo entitlements or authorisation” between shipper and respective shipping operators, in the wording of the Bill, will allow this to occur. Regrettably there was little understanding or acknowledgement of these concerns in the consultative process!

There has been widespread concern as regards the proposed administration of The Temporary Licence concept, especially as regards its requirement for quite specific and detailed cargo and voyage projections 12 (twelve) months forward, as a basis for obtaining a Temporary License, even though there are provisions for variation of same subsequently, in that on the face of it, but subject to actual performance testing, these appear to impose time consuming and cumbersome needs for multiple submissions, far exceeding the current system of application and reporting. The much heralded outcome of "greater transparency and recording of data" would seem to come at a price.

Summary View and Recommendation

1) **A renaming of "Temporary Licence" to instead: "Occasional License" would retain same definition of purpose (but allay concerns as regards the wider prospective (intent) implied by the word Temporary).**

2) **In Clause 3 – Object of the Act:**
   Insert: "(e) yet serves to provide efficient and cost effective freight solutions to Australian cargo interests (i.e. shippers)"

3) **Clause 28 – Application for a Temporary License**
   Add:
   " . evidence of contractual entitlement and authority to carry said cargo(es)"

4) **Delete (Clause 28): "Minimum of five (5) voyages over 12 months" and replace by: "One or several voyages over 12 months"**

It is held that these few, but quite decisive changes, would recognize cargo interests as part of cardinal objectives, and would not only greatly facilitate actual workability but also prevent referred to discrimination. It goes without saying that to give effect to such proposed changes, some consequential re-drafting of the Bill would be required.

In conclusion, the real test and purpose of this Reform Bill as it progresses through the Committee enquiry must be to provide a basic outcome for enactment which does not discriminate (unduly) for or against any one side of the coin (Shipping Industry versus Cargo Interests) **– and above all demonstrate and provide an actual improved outcome in the General Public (National) Interest.**

Submission 028
Received 20/04/2012

It is acknowledged that the proposed legislation allows for a 5 year period under the new Temporary License regime, and that therefore unlicensed (=foreign) ships will be able to trade on the Coast during this period – but only within prescribed criteria of the new legislation, and hence the vital importance of the details of same being in all respects workable and reasonable so as to not cause impediments to coastal trade. Having said that, there will no doubt be instances of individual Shippers electing not to be parties to this new costal shipping regime, for economic or other operational reasons, and instead move cargoes by land transportation modes, or even switching to import shipments in place of domestic deliveries. The decision by BlueScope Steel to abandon coastal shipping – and dispose of long serving coastal RO-RO vessel "IRON MONARCH" – and in future move 650,000 tpa of steel coils by rail from Port Kembla to Westernport instead, is early evidence of such development(s).

OTHER RELATED BILLS:

- **Shipping Registration Amendment (Australian International Shipping Register) Bill 2012**
- **Shipping Reform (Tax Incentives) Bill 2012**
- **Tax Laws Amendment (Shipping Reform) Bill 2012**

Reference is made to earlier submissions (as attached) in which the views of the undersigned are supportive of all of above measures, perceived as desirable, and in the National Public Interest, as well as being consistent with, and indeed mostly copying, similar legislation already in place at most major Shipping Nations.

However, whilst supportive, the expectations of developments remain guarded, for reasons set out.

Yours Sincerely
AUSTRALIAN SHIPPING CONSULTANTS PTY LTD

Henning Horn
Managing Director

Australian Government
Department of Infrastructure and Transport

Coastal Trading Bill Submissions

Feedback from Australian Shipping Consultants Pty Ltd

Objects of the Act

The objects fail to acknowledge and protect the public interests of cargo owners and shippers. This can be remedied by adding following sub section:

(e) "yet serves to provide efficient and cost effective freight solutions to Australian cargo interests (i.e. shippers)."

Without such acknowledgement, the objects would be seen as biased solely towards promotion and facilitation of shipping industry interests, to the exclusion and potential detriment of users and their legitimate interests. Indeed, the omission of "the Public Interest"—a longstanding cardinal condition of the permit system—is held to be flawed and contrary to the principle of equality under the law? The wording of Sec 286 of the Nav Act provided an appropriate balanced position, voided in current drafting.

Definitions, including the Meaning of Coastal trading

Whereas there is a definition for: "Emergency licence"; there is no definition for what constitutes an "Emergency"—nor is this definition to be found in Division 3 (only in the Explanatory document, which mentions: "...in emergency situations only, such as natural disasters or other critical emergency.").

A definition is required in the draft Bill, and it is suggested that an amplification of "other critical emergency" be given to "include industrial misadventures or incidents"

s.8—Meaning of Voyage

The drafting is repetitive—and in parts non sensical (i.e. notions of "turning around" and "empty ship")—and in the interests of clarity, sub sections (1) and (2) should be deleted in their entirety, leaving in place only current sub section (3)—now to be renumbered. (1).

Exemptions s. 13—Intrastate Voyages

Is the understanding, that the Minister can only declare the application of the Act, in cases where a request to this effect has been made by "the owner"—and if no such request has been made, the Act shall not apply (as is the case presently under Nav Act Part VI)?

Submission 028
Received 20/04/2012

General Licences

Nowhere does the Act define the status of Vessels under General Licence (only in the Explanatory notes is this definition to be found: Item 30: "General licences will provide those Australian registered vessels with unrestricted access to coastal trades..."?

Temporary Licences

By purposely expunging the concept of "a single voyage"—for past 100 years being the governing criterion for a "coastal voyage permit—incongrously, the proposed criteria for a Temporary licence application are now predicated upon having a definable requirement for several (more than two in number..?) voyages (cargoes)—thereby effectively seeking to prohibit and prevent the performance of a single voyage (cargo)—other than by way of General licensed or Emergency licensed vessel(s)—even in cases where such licensed vessel(s) are unavailable, unsuitable or plain non existant.

This would not only cause frustration of purpose (i.e. by regulation effectively preventing movement of a single cargo by sea on the Coast) for apparent spurious reasons, seeking to impose punitive and deliterious conditions upon the movement of cargoes in the competitive market place. The added cost penalty thereby encountered, would likely cause such cargoes to either move by land, or be replaced by imports—to no subsequent advantage nor benefit to Australian shipping providers, as intended!

Many cargoes are by requirement of a one off nature, to be moved in a single shipment, performed by or as part of a single voyage. Such cargoes, one off project or other types, will continue as a demand in the market place, requiring servicing by suitably sized and equipped vessels, available on a timely and cost effective basis, vessels which by configuration and special purpose functionality (such as Multi purpose Heavy Lift vessels) would be unlikely to find sufficient demand on a consistant basis on the Australian Coast justifying applying for a General licence—and given this situation it cannot be responsible to legislatively prevent chartering in (under Temporary licence provisions) suitably available international vessels for such purposes (when no Licensed vessels available).

s. 34—Grant of temporary licence

Sub section (2)—Constestability of: Timely availability, economic competitiveness, general and specific suitability to perform required task—are presumably all equally weighted evaluation elements vested in (b) i.e. to be equivalent to those proposed by vessel under Temporary licence?

As regards (c), add to final line after word: "cargo" the following: "shall remain overriding"

In circumstances where competing shipping interests apply for licences covering the same cargoes, controlled by a shipper, that same shipper must not be dis-enfranchised out of determining best viable and competitive freight offer, and must be left in charge determining with whom he will fix his cargo(es), and

in turn who will apply for a Temporary licence (in his own right or that of the contracted shipping operator)—this will also avoid problems associated with multiple (speculative) applications by competing shipping operators.

Emergency Licences

Refer comments above (definitions).

Enforcement Provisions

No comments.

Continuation Provisions of Permits and Licences

No additional comments.

Transitional General Licences

No additional comments.

Other comments

No additional comments.

Last Updated: 14 February, 2012

Submission 028
Received 20/04/2012

Established 1970
www.australianshipping.com.au

ABN 94 004 805 949
AUSTRALIAN SHIPPING CONSULTANTS PTY LTD

5 March 2012

Maritime Division
Department of Infrastructure
Department of Infrastructure and Transport
GPO Box 594
Canberra ACT 2601

SHIPPING REFORM

Preamble

This submission is made by way of observations and expressed opinions, and perceived consequences, concerning the principles and political intent of the draft bills, as presented and made available for discussion and commentary.

As regards the recently completed public consultation process, it must of course be understood that same would always be limited to a few finer points (drafting) in the contents wording, and would not present a means of changing any of the fundamental elements (policy directions) – and as expected, this has indeed been the case.

It is equally apparent that these bills are largely the results of a successful campaign by ASA (Australian Shipowners Association) who formulated and advocated these proposed policies, with support from the Maritime Unions. This is well in line with tradition, and understandably reflecting the market aspiration of the Industry, which, as correctly argued, has been in a state of decline for many years (i.e. reducing numbers of ever aging fleet, and thereby employment opportunities).

The undersigned supports the principle of, and sustainable prospects for a revitalization of the Australian Shipping Industry, provided this can be achieved by policies which can be clearly demonstrated to be of general public benefit, commercially and financially.

Regrettably, these aims are not being met in the current draft legislation, which if passed into law, with particular reference to the Coastal Trading Bill, would have deliterious effect upon the workings and above all, the freight economics of cargo movements on the coast. There is a definable prospect (threat) of longstanding coastal trades (dry bulk as well as liquids) being terminated and replaced by imports, thus directly negating the desired outcome, by in effect reducing the future transportation task.

SUITE 14
45-51 RINGWOOD STREET
RINGWOOD, VIC
AUSTRALIA 3134

P.O. BOX 716
RINGWOOD, VIC
AUSTRALIA 3134

TELEPHONE: (03) 9847 0288
FAX: (03) 9870 1866
EMAIL: austship@australianshipping.com.au

Submission 028
Received 20/04/2012

AISR – Tax Relief

The other elements of the Reform Agenda i.e. formation of an Australian International Shipping Registry (AISR), supported by underpinning tax exemption and accelerated asset depreciation, are all positives and supportable, in that it brings Australia in line with major Shipping Nations, and would not represent a significant burden on the National Economy, in any case more than offset by countering benefits.

Having said that, the undersigned takes a much more conservative view of the eventual outcomes i.e. whilst these measures should accelerate investment to replace aged coastal vessels, the very optimistic estimates of a large IASR fleet explosion engaged in Australian export cargo movements, are not shared. Certain high value commodities and trades supported by firm long term CIF sales contracts, such as LNG, may offer such opportunities, as already well established by that Industry.

However, an influx of International Shipowners to the new registry, is highly unlikely, in the knowledge that similar or even better incentives can be enjoyed elsewhere (Singapore, is but one of many examples).

Some major Bulk Commodity Shippers may well elect to invest, directly or indirectly, in own tonnage, for long term market presence and freight cost stabilization purposes. Conversely, it is most unlikely that new investors (and operators) would risk embracing these incentives in the absence of firm and long term freight contracts i.e. the expectation of fostering an emergence of speculative entrepreneurs is just not realistic.

Bareboat (Demise) charter of ships would offer a less demanding entry, as opposed to direct asset investment, again directly or indirectly, and financiers would demand high security and proven return capability.

Fundamentally, International Shipping interests locate themselves in environments which are not just financially attractive, but offer the most operational flexibility, with minimum regulatory imposition, and thereby providing the best economic platform for their vessels deployment in the highly competitive International market place. Contrary to some locally espoused suggestions, that somehow this results in inferior or unsafe ships, and that Australian registered ships would inherently be of a higher standard, are pure posturing and not borne out by facts.

Coastal Trading Bill

The draft legislation has been presented as a "cohesive package", claiming that all three elements must be interwoven to achieve the desired outcomes, which, as regards Coastal Shipping are:

- to greatly reduce, preferably replace foreign ships on the coast

thereby

- foster growth in numbers of fully licensed vessels, and their engagement in coastal trade

these aims being promulgated by abolishment of Section VI of the Navigational Act, together with the so called Permit System (Ministerial Guidelines Regulations), and by instead imposing a new licensing regime, in turn driving the policy aim, based on the premise that over a period of 5 years, the coastal shipping requirements have somehow "re-moulded" themselves, enabling use of largely fully licensed local vessels to sustainably service same - a most unlikely prospect in reality.
Unless there were to be additional extreme regulation introduced, which would serve to make use of licensed vessels compulsory, and not subject to the longstanding tests of vessel selection criteria:

- suitability to the task
- timely availability
- freight offer competitiveness
- public interest

Shippers will continue to seek and obtain freight solutions for their cargoes which meet their commercial and economic needs, and as fundamental to their shareholders requirements, and it could be said, the public interest.

Proposed temporary Licence Regulation

It is the view of the undersigned that, as drafted, this concept is fundamentally flawed, and would prove itself to be unworkable.

a) The politically formed view that, the very concept of "a coastal voyage" is wrong, and must be changed (due to alleged "rorting of the system") in favour of a temporary license system, is not readily fathomed, when considering that "the voyage" (and the selected vessel) have been the governing criteria for 100 years of Coastal Permit trading.
What has changed?

b) As opposed to the well proven and tested past regime, it is now proposed to replace with a so called Temporary License regime (inferring by its very name an expected transition process to a fully licensed regime i.e. General License),which now moves away from the identifiable single voyage, to a projective number of voyages over a period of 12 months (in many cases, incapable of forward projection) and inexplicably setting a minimum to 10 definable voyages as a **qualifying criterion** – in a concept scenario where the shipper (controlling party of the cargo) is likely to lose control in the decision making process, and be subjected to speculative ship operator applications and effective license attainments, as opposed to the workable

Submission 028
Received 20/04/2012

current process allowing the shipper full decision making process in selection of best bid and granting of eventual fixture.

The new Temporary License System is being heralded as being "in the public interest and providing greater transparency" and this may well be so for some, as a consequence of cumbersome reporting process – whilst providing little new knowledge not already known to the Industry players.

By enhancing a statistically generated data base, it is clearly intended as providing a direction for transition prospects from Temporary to Licensed Status – a somewhat worrying prospect, if politically motivated and driven!?

In summary, the undersigned contends, that:

- Abolition of, and effectively non-acceptance of a "single voyage (cargo)" is wrong, and only serves to place obstacles in the way of commercial requirements and dealings

and will

- work contrary to "public interest" (latter always in the past a cardinal objective)

- The expectation that the flow of coastal cargoes (volumes, ports, frequency, constraints of storage, etc, etc) will change over time, and by such change, facilitate a move from occasional use of foreign vessels to a permanent use of commercially sustainable General Licensed Australian vessels, are more in the realms of Wishful thinking, than rationally sustainable prospects.

X X X X X X X X X X

Finally, in the view of the undersigned, there is no apparent inter-dependency demanding a "cohesive package" by way of a compelling case in favour of maintaining and adopting all 3 current Bills (as a whole), indeed, it would be perfectly workable to only progress the IASR and Tax Bills, but standing aside the Coastal Trading Bill for substantive review and reconstruction , so as to ensure, that Coastal Trading remains open to International competition (in the absence of suitably General Licensed Australian Vessels) and thereby preserve ongoing cost efficiency of Coastal cargo movements by way of competitive selection processes.

As suggested by several concerned Shipper bodies, a referral for review by the Australian Productivity Commission would seem an appropriate step in the first instance, at the same time granting more time for ongoing re-evaluation by all directly affected parties (policy makers and cargo interests).

OBS:
It should be noted, and understood, that the above are personal reflections and opinions of the undersigned (having been a practitioner in Australian Shipping for 45 plus years), and they are not presented on behalf of or under assignment to Clients.

Yours Sincerely,

Henning Horn
Managing Director

AUSTRALIAN SHIPPING CONSULTANTS PTY LTD