

**Supplementary Submission of CSL Australia Pty Ltd to the House of  
Representatives Standing Committee on Infrastructure, Transport,  
Regional Development and Local Government**

***REVIEW OF SHIPPING POLICY AND REGULATION***

**Introduction**

1. CSL Australia Pty Limited (“CSL”) wishes to make supplementary submissions to the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government (“the Committee”) in relation to its Review of Australian Shipping Policy and Regulation (“the Review”).
2. CSL has followed carefully the transcript of proceedings and the various submissions made by the parties. CSL wishes to clarify 3 matters arising out of its original submission:
  - (a) the relationship between the nationality of a ship’s flag and the granting of a license to operate on the Australian coast;
  - (b) the role of awards and the Australian industrial tribunals in the Australian maritime industry;
  - (c) CSL’s experience in undertaking training new seafarers.

**Licensing and Nationality of a Ship’s Flag**

3. Numerous submissions have conflated the issue of granting licenses and the flag of ships. Australia’s cabotage regime does not distinguish between Australian flagged and foreign flagged ships in any formal sense. The description of foreign flagged ships as “flags of convenience” hides, rather than reveals, the nature of a ship’s operations and the laws which apply to the ships.
4. Even though a ship is foreign flagged, the ship will be subject to Australian coastal shipping regulation and will be subject to Australian ship safety laws during its time on the Australian coast. Where a foreign ship has a license, it must comply with the same Australian laws as Australian flagged ships including safety, the environment and industrial awards . Importantly, the license obliges the ship owner to pay the crew in accordance with the minimum wages paid to Australian seafarers and is subject to Australian seafarers’ compensation, occupational health and safety and ship safety laws.

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5. There are several foreign vessels that operate under license. CSL operates 7 vessels under license including the CSL Pacific, and the Cementco which are foreign flagged vessels. Both the CSL Pacific and the Cementco comply with Australian shipping laws and their crew receive the payment of wages in accordance with the applicable Australian maritime award.
6. The majority of permit ships are foreign ships. Ships operating under permits must comply with Australian and international safety laws. Under the Minister's Guidelines, the Minister may take into account a ship's safety and environment record before granting a permit. The Minister also imposes certain conditions on the ship's operator under the permit, including conditions relating to safety, breach of which can lead to the permit's cancellation.
7. In addition, the Australian Maritime Safety Authority enforces port state control obligations in accordance with various international conventions including the Safety of Life at Sea Convention. As a result, during their period in Australian waters, foreign ships must have the same standard of safety as Australian ships.
8. It is also incorrect to say that foreign ship operators do not pay Australian taxation. It is not the flag of the ship that determines whether tax is paid; it is the location of the business. For example, CSL operates three permit vessels, in addition to its six Australian licensed vessels. CSL pays the same taxation on the revenue earned on its ships, regardless of whether they are Australian licensed or permit vessels.

**Australian awards and Australian industrial regulation**

9. The chief award that applies to the Australian maritime industry - the Maritime Industry Seagoing Award (the **Maritime Award**) – remains a major impediment to broader industry reform and growth of the Australian maritime industry. The Maritime Award contains terms and conditions of employment that are significantly more beneficial than Australian community standards and international shipping industry standards. It inhibits productivity and encourages restrictive work practices.
10. It is true that the High Court of Australia determined that the Australian Industrial Relations Commission (the **Commission**) had the jurisdiction to apply foreign crew employed by a foreign employer working on foreign ships operating under permits. However, while the Commission had jurisdiction to extend the Maritime Award to foreign crew on foreign owned and registered ships, the Commission declined to do so. Commissioner Raffaelli held in 2 separate decisions that, on the merits of each

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case, that he was not persuaded to accede to the application of the Australian maritime unions to extend the Maritime Award to such ships. Commissioner Raffaelli reached this conclusion after hearing over 20 witnesses about the Australian and international shipping industry and extensive submissions for the Australian maritime unions. In declining to apply the Maritime Union to CSL's foreign ships, the Commission held that:

- (a) the Australian crews on Australian ships were generally unwilling to undertake routine ship maintenance;□
- (b) the crew "swing" is at odds with international standards;□
- (c) there is a refusal by Australian crews to perform maintenance work and the cleaning of holds as routine duties without additional payments even though it formed part of their duties and responsibilities;□
- (d) paid leave under the Maritime Award accrued at a rate approximating six months' paid leave in every twelve months that far exceeded Australian community and international shipping industry standards;□
- (e) the paid leave improperly included sick leave, bereavement leave and carer's leave even though a crew member might not ever take such leave;
- (f) there is double counting between paid leave and additional overtime payments in the annualised salary;
- (g) the annualised salaries under the Maritime Award meant there was no monetary incentive to work overtime and thus crew resisted performing such work;
- (h) the rates of pay had not been properly set in accordance with Commission's wage fixing principles;
- (i) the classification structure did not suit the efficient performance of work or did not reflect the actual work performed and the positions on the foreign ships.

11. Even though the Commission held that the Maritime Award did not meet Commission standards, the Maritime Award remains unreformed and still contains the same problematic clauses. During the recent award modernisation review, the Commission did not identify the Maritime Award as a priority award for reform. CSL submits that the Maritime Award must be considered as part of any broader reform of Australian shipping regulation.

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**Training**

12. CSL Australia undertakes significant training in the Maritime Industry particularly the training of seafarers to STCW 95 Certificates of Competency. CSLA has sponsored the introduction of the Integrated Rating Course and Deck Watchkeepers Course at Hunter TAFE and has committed to support the college for continued training of Australian Seafarers.
13. Since 2005, CSLA have sponsored 60 Trainee Integrated Ratings to complete the course in Newcastle and the qualifying sea time to become Integrated Ratings. Additionally, 12 Engineer watchkeepers and 7 Deck Watchkeepers have been sponsored with 50% already completing their qualifying sea service .
14. In 2008, we have sponsored a further 26 Trainee Integrated Ratings in the first and second semester at Hunter TAFE.
15. CSLA is currently sponsoring a total of 5 Deck Watchkeepers, 4 Engineer Watchkeepers and 48 Trainee Integrated Ratings. There are also 6 CSL sponsored officers undergoing training for higher certification.
16. CSLA has spent in excess of \$2m pa to achieve the above outcomes . CSLA budget for training for its seagoing personnel for 2008-2009 financial year is \$2.4m .
17. CSLA has not requested sponsorship or subsidy from the Australian Government to undertake this training.

