



Submission No 38

Inquiry into Australia's Maritime Strategy

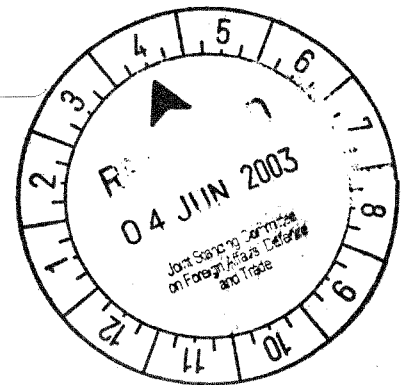
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Submission: 38

Mr Stephen Boyd
Secretary
Defence Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
CANBERRA ACT 2600



Dear Mr Boyd

I refer to your letter of 5 May 2003 to the Secretary of the Department of Transport and Regional Services, seeking advice on issues raised during the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into Australia's maritime strategy. Mr Matthews has asked me to reply on his behalf.

The submission of the Australian Shipowners Association (ASA) makes reference to a number of matters that impact on the Australian shipping industry including customs, migration, workplace relations, income tax, ship registration and navigation. These issues have been widely debated over a lengthy period in an industry policy context and their relevance to Australia's maritime strategy in the context of the Sub-Committee's Terms of Reference could be argued to be tenuous. The Sub-Committee has sought comments in respect of the ship registration issues.

Registration of ships

Section 12 of the *Shipping Registration Act 1981* provides for an obligation to register Australian-owned ships as follows.

(1) Subject to this Part, every Australian-owned ship shall be registered under this Act.

(2) Where an Australian-owned ship is operated by a foreign resident under a demise charter, the Authority may, by instrument in writing, exempt the ship during the term of the charter from the requirement to be registered.

(3) Where a ship required to be registered is not registered, the owner of the ship is, in respect of each day on which the ship remains unregistered (including the day of a conviction for an offence against this subsection or any subsequent day), guilty of an offence, and, whether or not proceedings are instituted for such an offence, the ship may be detained until registration is effected.

(3A) An offence under subsection (3) is an offence of strict liability.

(4) It is not a defence to a prosecution under subsection (3) that the ship required to be registered is registered under the law of a foreign country.

As requested, a copy of the *Review of the Shipping Registration Act 1981* is attached (Attachment A). The review was broad based and included comparative data for foreign countries.

Section 5.3 of the Review recommends, among other matters, that section 12 (obligation to register) be amended. The proposed amendments have not been reflected in a draft Bill due to other priorities in the Government's legislative program.

The submission of the Maritime Union of Australia refers to the increasing number of single voyage and continuing voyage permits that have been issued in recent years. Again this issue has been widely debated over a lengthy period in an industry policy context and the relevance to Australia's maritime strategy has, in our view, not been demonstrated. The Sub-Committee has asked for information on Coasting Trade Permits.

Coasting Trade Permits

The legislative provisions relating to the issue of coasting trade permits, both single voyage permits (SVPs) and continuing voyage permits (CVPs) are set out in Part VI of the *Navigation Act 1912* (Attachment B).

Section 286 provides for a permit to be issued in circumstances where no licensed ship is available and it is in the public interest for a permit to be issued. Permits issued under the section can be for a single voyage only or for a continuing voyage permit. The legislation relating to the issue of permits has not been changed for at least 40 years.

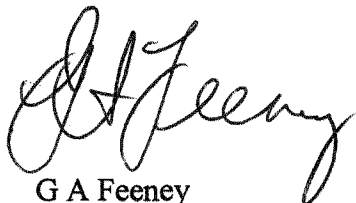
The administrative arrangements relating to issuing licences and permits are described in the *Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping Trade*, a copy of which are at Attachment C.

The administration of the coasting voyage permit scheme has been the subject of legal challenge. Attached is a copy of the Minister for Transport and Regional Services media release, dated 23 June 2000, in the wake of the Federal Court decision (Attachment D).

The increase in the number of permits reflects the availability of licensed vessels. Permits, both single voyage and continuing voyage, can only be issued in circumstances where an Australian licensed vessels is not available or inadequate for a specified task. In the absence of a licensed ship, a vessel operating under a permit is the only option available to shippers who wish to transport their cargo by sea.

Back to back CVPs are used by a number of liner ship operators. These operators provide scheduled services between Australia and other countries. Typically, a vessel would provide say a monthly service between Australia and a number of overseas ports and as part of that international voyage could carry some cargo between two or more Australian ports which are part of its international schedule. In this particular example, the vessel would call at eastern coast ports, Fremantle and then a number of overseas ports once a month. A liner operator

may choose to apply for a CVP of a three-month duration to cover three "service loops". Coastal cargoes carried in these circumstances are subject to the "availability" test, that is, cargo may only be carried if there is no licensed vessel available.



G A Feeny
First Assistant Secretary
Transport and Infrastructure Policy Division

30 May 2003

NAVIGATION ACT 1912

Part VI—The coasting trade

284 Application of Part

This Part shall, except where otherwise expressed, apply to all ships, including ships to which Part II does not apply.

286 Permits to unlicensed ships

- (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, the Minister may grant permits to unlicensed ships to do so, either unconditionally or subject to such conditions as he or she thinks fit to impose.
- (2) The carriage, by the ship named in a permit issued under this section, of passengers or cargo to or from any port, or between any ports, specified in the permit shall not be deemed engaging in the coasting trade.
- (3) A permit issued under this section may be for a single voyage only, or may be a continuing permit.
- (4) A continuing permit may be cancelled by the Minister upon not less than 6 months' notice to the master, owner or agent of the ship of the Minister's intention to cancel it.
- (5) The Minister shall, within 14 days of the granting of a continuing permit under this section, or the notice of intention to cancel any such permit, notify in the *Gazette* the issue of the permit, or the giving of the notice, as the case may be, with particulars thereof.
- (6) Where it is shown to the satisfaction of the Minister that the tourist traffic between any ports in the Commonwealth or in the Territories is being injured or retarded, and the Minister is satisfied that it is desirable that unlicensed ships be allowed to engage in the trade, the Minister may, by notice published in the *Gazette*, grant permission to unlicensed ships of such size and speed as are specified in the notice to engage in the carriage of passengers between those ports subject to such conditions (if any) and for such period as are set out in the notice.
- (7) The carriage of passengers between those ports, by a ship of the description specified in any such notice and under the conditions (if any), and during the period, set out in the notice, shall not be deemed engaging in the coasting trade.

287 Ships in receipt of subsidies

- (1) The master, owner and agent of a ship commit an offence if:

- (a) any one or more of the master, owner and agent engage in conduct; and
- (b) the ship:
 - (i) is receiving, directly or indirectly, any subsidy or bonus from the Government of a country other than Australia; or
 - (ii) is to receive such a subsidy or bonus under an arrangement; or
 - (iii) has received such a subsidy or bonus in the 12 months immediately preceding the conduct; and
- (c) the conduct results in the ship engaging in the coasting trade.

Penalty: \$5,000.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Any payment for services *bona fide* rendered in the carriage of mails, passengers, or goods, at rates based solely on the actual commercial value of these services, shall not be taken to be a subsidy within the meaning of this section.

288 Licensing of ships to engage in coasting trade

- (1) Subject to this Act, where a ship that is not licensed to do so engages in the coasting trade, the master, owner and agent of the ship are each guilty of an indictable offence punishable on conviction by a fine not exceeding \$5,000.
- (2) Licences to ships to engage in the coasting trade shall be for such period, not exceeding 3 years, as is prescribed, and may be granted as prescribed.
- (3) Every licence shall be issued subject to compliance on the part of the ship, its master, owner, and agent, during such time as it is engaged in the coasting trade, with the following conditions:
 - (a) That the seamen employed on the ship shall be paid wages in accordance with this Part;
 - (c) That where a library is provided for the use of passengers, every seaman shall—where no library for their special use is provided—be entitled to obtain books therefrom under the same conditions as may regulate the issue of such books to the passengers.
- (4) Where a condition referred to in paragraph (3)(a) is not complied with, the owner of the ship is guilty of an offence punishable on conviction by a fine not exceeding \$5,000.
- (5) Before granting any licence, the Minister may require security to be given to his or her satisfaction by the master, owner, charterer or agent for compliance with the conditions of the licence and the requirements of this Part.
- (6) In addition to, or in lieu of, any penalty otherwise provided, the Minister may cancel any licence if he or she is satisfied that a breach of any of the above conditions has been committed.
- (7) No licence shall be cancelled unless an opportunity has been given to the master, owner, or agent of the ship to show cause against cancellation.
- (8) An offence under subsection (1) or (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

289 Payment of Australian rates of wages

- (1) 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, 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 may sue for and recover those wages.
- (2) In the case of ships trading to places beyond Australia, the wages to which a seaman is entitled under this section shall be paid before the departure of the ship from Australia, and the master of such a ship shall produce to the officer of Customs to whom application is made for a clearance under the Customs Act for an international voyage from a port in Australia evidence to the satisfaction of that officer of such payment, and the officer of Customs may refuse to grant the clearance, and the ship may be detained, until such evidence is produced to him or her.

290 Indorsement of rate of wages on agreement

- (1) If the seamen employed on any ship were not engaged in Australia, the master shall, before the ship engages in the coasting trade, make and sign an indorsement or memorandum on the agreement specifying the wages to be paid to the seamen whilst the ship engages in the coasting trade, and that indorsement or memorandum shall have effect as an agreement under section 46 between the master and those seamen.
- (2) Where under the original agreement a seaman is entitled to be paid at a higher rate of wages than the rate ruling in Australia for seamen in a corresponding rating, nothing in this section shall affect the seaman's right to such higher rate during the engagement of the ship in the coasting trade.

291 Seamen's rights not affected by agreement

- (1) No provision in any agreement, whether made in or out of Australia, shall be taken to limit or prejudice the rights of any seaman under this Part.
- (2) Where, by reason of a seaman's being entitled to a higher rate of wages while the ship on which the seaman serves is engaged in the coasting trade:
 - (a) any deduction is made from his or her wages earned out of Australia; or
 - (b) the seaman is paid a lesser rate of wages outside Australia than is usual in voyages of a similar nature;

it shall be deemed that the seaman is not paid wages in accordance with this Part while the ship is so engaged in the coasting trade.

292 Evidence of rates of wages

An award within the meaning of the *Workplace Relations Act 1996* which is binding on or applicable to seamen employed in the coasting trade, or a certificate of the Industrial Registrar or a Deputy Industrial Registrar holding office under that Act certifying what are the rates of wages ruling in Australia for seamen employed in any part of the coasting trade, shall be *prima facie* evidence of those rates of wages.

293 Responsibility of master, owner and agent for compliance with Act

The master, owners, and agents of any ship engaging in the coasting trade, shall be jointly and severally responsible for compliance with this Part by or in respect of the ship.

293A Power to suspend provisions as to coasting trade

- (1) The Governor-General may, if at any time he or she considers it expedient in the public interest to do so, by Proclamation suspend, for such time as is specified in the Proclamation, the operation of any of the foregoing provisions of this Part, as regards any ship or class of ships, and either unconditionally or subject to such conditions (if any) as he or she thinks fit to impose.
- (2) A Proclamation issued in pursuance of subsection (1) may provide for suspension for the period specified in the Proclamation, or may provide for suspension until the issue of a Proclamation revoking the prior Proclamation.

Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping Trade

These Guidelines were approved by the Hon. Peter Reith MP, Minister for Workplace Relations and Small Business, on 24 June 1998.

Purpose

This document sets out the legislative provisions and administrative practices for the issue of licences and permits to engage in the Australian coasting trade.

The Coasting Trade

The *Navigation Act 1912* (the Act) defines the coasting trade (ie carriage of domestic passengers/cargoes) and details the requirements for engaging in that trade.

Under the Act a ship is deemed to be engaged in the coasting trade if it takes on board passengers or cargo at any port in a State or a Territory and delivers that cargo to a port in another State or Territory. Intrastate shipments are excluded from the coasting trade provisions of the Act.

Passengers on through tickets to/from overseas and international cargo on through bills of lading are not considered to be part of the coasting trade.

The Act provides for substantial penalties for ships engaging in the coasting trade without a licence or a permit.

Exemptions from the Coasting Trade

The Act and other legislation variously provide for certain trades to be exempt from the requirement that a ship must be licensed or have a permit to engage in them.

Ships engaged in trades between the mainland and the following Commonwealth territories, or in trades between those territories, have such exemptions:

- Christmas Island
- Norfolk Island
- Cocos (Keeling) Islands
- Antarctica
- Heard Island and McDonald Islands

Also exempt are passenger cruise liners operating in coastal passenger trades other than those between Victoria and Tasmania (further details are provided below – see Single Voyage Permits – passengers).

Licensing of Vessels to Engage in the Coasting Trade

Licences are not restricted to Australian flagged and crewed vessels.

Licences are issued on condition that:

- (a) seafarers employed on the ship are paid at least Australian wage rates;

- (b) the ship is not receiving, nor has been receiving during the past 12 months, nor is to receive a subsidy or bonus from a foreign government; and
- (c) if applicable, the crew has access to the passengers' library.

Licences are issued for a 12 month period (or part thereof) ending 30 June and are renewable annually.

Licensed vessels are not restricted to specified trades. A licensed ship may engage in any of the coasting trades.

Licensing fees are prescribed by Regulation pursuant to the Act. The current fee is \$22.

Single and Continuing Voyage Permits

Permits, either a single voyage permit (SVP) or a continuing voyage permit (CVP) may be issued to unlicensed vessels to engage in a trade between ports where:

- (a) no licensed ship is available for the service; or
- (b) that the service as carried out by the licensed ships is inadequate;

and the Minister is satisfied that it is in the public interest to allow an unlicensed ship to engage in that trade.

Single Voyage Permits

SVPs exist for circumstances where there is a one-off unavailability of suitable licensed ships. A SVP is issued for a particular vessel to carry a nominated number of passengers or amount of cargo between specified ports on particular days.

Permits may only be issued where licensed tonnage is not available or inadequate and it is in the public interest. The assessment of availability, inadequacy and the public interest has regard to a requirement for the maintenance of supplies, production, service or contractual obligations that could not be met by using licensed ships.

Ships issued with permits would be expected to meet the standards of safety and working conditions of international conventions to which Australia is a party. Ships issued with permits will be liable for port State control inspections by the Australian Maritime Safety Authority.

Availability

A licensed ship may be considered unavailable if the operator cannot guarantee that it will be presented to ship cargo according to a schedule that meets the reasonable needs of the shipper. Licensed ships may also be unavailable if they have contractual arrangements, which give other shippers priority at short notice.

Adequacy of Licensed Services

A licensed ship is considered inadequate when it is not suitable to perform the task. Suitability may be determined on the basis of the delivery requirements of the shipper, the technical characteristics of the ship in question and the capacity of the ship to transport cargo safely.

The delivery requirements of shippers are the primary determinants of whether licensed vessels are adequate and in particular whether the cargo can be delivered in a timely, sound and uncontaminated condition. Translating this to a practical level, cargo may be required to

be containerised or delivered in bulk or transported in food grade holds or be available at the unloading port on a particular date, etc.

Public Interest

The public interest is assessed for each permit application on the merits of the case. In the case of tankers and dry bulk vessels satisfactory inspection reports are required to satisfy the public interest test.

Tankers

An independent inspection report based on the Oil Companies International Marine Forum (OCIMF) inspection standards, together with a letter from the charterer stating that the ship is in a satisfactory condition to undertake the intended shipment, must accompany a SVP application for an oil, chemical or LPG tanker. The inspection report remains valid for a period of 6 months from the date of inspection.

Dry Bulk Carriers

A completed inspection proforma supplied by the Department is to accompany SVP applications for dry bulk carriers. In addition a declaration by the charterer that, on the basis of information provided the vessel is believed to be suitable for the intended voyage, is required. The inspection report remains valid for 6 months.

Passengers

To facilitate tourist traffic, cruise liner passenger trades, with the exception of the Victoria/Tasmania trades, are exempt from the coasting trade requirements of the Act.

Cruise liner passengers travelling between Victoria and Tasmania require SVPs (note this does not include passengers who are carried across Bass Strait as part of a longer journey). SVPs are not required for passengers being carried on cruise liners on other routes.

Cruise liners are defined as ships in excess of 5000 gross registered tonnes, capable of a speed of at least 15 knots, capable of carrying at least 100 passengers and utilised primarily for the carriage of passengers.

Fees

Permit fees are prescribed by Regulation. The fee for a normal SVP is currently \$200. The fee for an urgent SVP, that is one required by the close of business on the day following the day on which the application is made, is \$400.

Fees are to accompany applications. Frequent users of SVPs can arrange to pay periodically, sums to the Commonwealth which will be held and be used to pay application fees. This facility is offered for the convenience of applicants and only on the basis that the money is not held 'in trust' ie. monies not used by applicants will remain with the Commonwealth.

Public Release of SVP Data

Details of SVP applications will be provided to relevant licensed ship operators, at the time of application, to enable the Department to assess the availability and suitability of licensed tonnage. In addition, details of SVPs issued during each quarter will be released publicly.

Continuing Voyage Permits

Coastal shipping requirements over an extended period when there is insufficient or inadequate suitable licensed ships, could be met by operators licensing their ships (the requirements are detailed above) or applying for a CVP. Unlike a licence, a CVP is issued for a particular vessel to carry passengers or cargo between specified ports.

A CVP may be issued for up to 6 months. CVPs may be issued for successive periods of 6 months.

The prerequisites for a CVP are the same as for a SVP, namely that licensed vessels are unavailable or inadequate and the Minister is satisfied that it is in the public interest to allow an unlicensed ship to engage in that trade.

The question of whether licensed ships are available and adequate is addressed on a case by case basis. In circumstances where a licensed ship is available for part of the period covered by a CVP, the permit is issued on condition that it will be only be used when a licensed ship is not available. The permit holder is responsible for ascertaining the availability of licensed ships prior to each voyage. The Department will arbitrate disputes on the availability of a licensed ship, between the permit holder and the operator of a licensed ship. Failure to observe the conditions of a CVP will result in an immediate revocation of the permit in addition to the master, owner and agent of the ship being liable to the penalties specified in the Act.

The public interest criteria are the same as SVPs including satisfactory inspection reports and shipper declarations for tanker and dry bulk carrier permits.

CVP fees are prescribed by Regulation. The current fee is \$400.

Public release of CVP data and consultation with licensed ship operators are as for SVPs.

Media Release

Hon John Anderson

Deputy Prime Minister

Minister for Transport and Regional Services

23 June 2000

A101/2000

FEDERAL COURT FINDS AGAINST MARITIME UNIONS

Justice Kenny of the Federal Court today dismissed claims made by the maritime unions against the Minister for Transport and Regional Services, John Anderson, concerning the issue of Single Voyage Permits under the *Navigation Act 1912*.

Justice Kenny found that the permits were issued in full compliance with the provisions of the Act. The unions must pay all costs involved with the case.

Mr Anderson said the permit system represented an appropriate balance between the preference for licensed local ships and the commercial needs of Australian shippers in moving cargo interstate.

"Unfortunately, it is clear that the maritime unions see the existence of shipping as serving only the interests of their members, rather than the broader interests of Australian industry and the community," Mr Anderson said.

Mr Anderson said the inflexible approach taken by the unions had been clearly illustrated in the Federal Court hearing.

The union representatives even bizarrely claimed that an Australian ship which might only be *two feet long* and capable of transporting only *10 grams of cargo* should be used before another foreign flag vessel, even if the load to be carried was 100,000 tonnes.

"The unions claim that the needs of industry are secondary to the requirements of their members. Once again, this is a case of unions putting themselves ahead of the national interest."

Mr Anderson also noted that Justice Kenny in her judgement stated that the legislative construction contended by the maritime unions "would lead to capricious and absurd results".

The unions have argued that the increase in single voyage permits is due to Government action. The facts clearly indicate that the increase in permits is due to shipping companies withdrawing services due to the highly uncompetitive cost of Australian shipping, including crew costs.

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