The Parliament of the Commonwealth of Australia

Report on the

MARITIME LEGISLATION AMENDMENT BILL 2000

Report by the Senate Rural and Regional Affairs and Transport Legislation Committee

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CHAPTER ONE

THE COMMITTEE'S INQUIRY

Reference of the Bill to the Committee

1.1 On 4 April 2001, on the recommendation of the Senate Selection of Bills Committee, the Senate referred the *Maritime Legislation Amendment Bill* 2000 (the Bill) to the Legislation Committee for inquiry and report by 19 June 2001[1]. The Committee was later granted an extension of time to report until 28 August.[2]

1.2 The Committee was required to inquire into and report on the bill and to consider the following issues:

a) The change in jurisdictional basis for shipping safety from voyage based/interstatedness to tonnage based;

b) The adequacy of arrangements between States for interstate voyages of ships under 500 tonne;

c) The constitutionality of the new jurisdiction;

d) The opt out guidelines and numbers affected;

e) The rationale for the amendment to s 284.[3]

Purposes of the bill

1.3 The main purposes of the Bill are to:

a) amend the *Navigation Act* 1912 to rearrange Commonwealth, State and Territory responsibilities regarding safety regulation of Australian trading ships and foreign flagged trading ships visiting Australia and

b) amend the *Seafarers Rehabilitation and Compensation Act* 1992 and *Occupational Health and Safety (Maritime Industry) Act* 1993 to reflect, as far as possible, the jurisdictional rearrangements proposed by amending the *Navigation Act* 1912.

The Committee's Inquiry

1.4 On referral of the provisions of the Bill, the Committee approached Government, and groups and bodies associated with and representing the interests of the maritime industry for their views on the Bill. The Committee received seven written submissions on the Bill and two supplementary submissions. These submissions are shown at Appendix 1 of the report.

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1 *Journals of the Senate*, 4 April

2 *Journals of the Senate*, 19 June

3 *Journals of the Senate*, 4 April

1.5 The Committee held a one-day public hearing on the Bill in Canberra on Thursday, 9 August 2001. The witnesses who appeared at the hearing are shown in Appendix 2 of the report.

1.6 All submissions and the *Hansard* of the Committee's hearing on the Bill are tabled with this report, together with supplementary material provided to it following the Committee's hearing. The *Hansard* of the hearing is available at the Hansard site on the Parliament House homepage on the Internet (www.aph.gov.au).

Consideration of the Committee's Report

1.7 The Committee met on Tuesday, 28 August to consider its report.

Acknowledgments

1.8 The Committee acknowledges the assistance and contribution made to its inquiry by all those who prepared written submissions on this inquiry. The Committee also acknowledges the assistance provided at its public hearing on the Bill by all witnesses. This co-operation has allowed the Committee to prepare and present its report on time.

CHAPTER TWO

THE PURPOSE AND SCOPE OF THE BILL

Purpose of the Bill

2.1 The Maritime Legislation Amendment Bill 2000 provides for revised jurisdiction between the Commonwealth and the States and Northern Territory for trading ship safety regulation under the *Navigation Act 1912*.

2.2 The bill amends the following pieces of legislation:

a) *Navigation Act* 1912

b) *Seafarers Rehabilitation and Compensation Act* 1992

c) *Occupational Health and Safety (Maritime Industry) Act* 1993.

2.3 The Navigation Act is administered by the Department of Transport and Regional Services [DOTRS] and the latter two pieces of legislation by the Dept of Employment, Workplace Relations and Small Business [DEWRSB].

Impetus for the amendments

2.4 The amendments to the legislation emanate from:

a) a 1999 agreement by the Australian Transport Council (ATC), representing all State and Territory Transport Ministers to a change in jurisdictional responsibility for safety regulation of trading vessels. The ATC agreed that the present division of responsibilities between the Commonwealth and the States/Northern Territory should be based on vessel tonnage and not on a trading vessel's voyage pattern;

b) the Workplace Relations Ministers Council [WRMC] decision to align jurisdiction for seafarers' occupational health and safety and workers' compensation.

Maritime safety regulation in Australia

2.5 The Australian Maritime Safety Authority [AMSA] has responsibility for ship safety and marine environment protection under the *Navigation Act* 1912. The Act implements the major international ship safety conventions to which Australia is a party. Shipping regulation, as an international industry, is based on a number of multilateral treaties promulgated by international organisations, primarily the International Maritime Organisation [IMO]. AMSA takes an active role in the IMO in developing, implementing and enforcing international maritime standards on the safety of ships, their operation, crews, passengers and cargoes and prevention of pollution. AMSA is a member of the Safety Sub-Group of the Australian Maritime Group, formerly the National Maritime Safety Committee.

2.6 AMSA is responsible for licensing all crew members of Australian ships operating under the Navigation Act to ensure their competency standards meet the needs of the Australian

shipping industry and Australia's obligations under the International Convention for Standards of Training, Certification and Watchkeeping for Seafarers (STCW95).

2.7 Safety regulation encompasses crewing (manning levels and crew competencies and qualifications), vessel (structure, equipment) and operational (safe loading/unloading, navigation, watchkeeping) standards. Vessels and crews are required to have relevant valid certification and may be subject to inspection. Vessels also are required to be operated in accordance with the applicable regulations and Marine Orders.[1]

2.8 Ships that are subject to Part II of the Act (crewing) are also subject to the Seacare and OHS(MI) Acts. AMSA provides the inspectorate function under the OH&S [MI] Act and is a member of Seacare [the Seafarers Safety, Rehabilitation and Compensation Authority], an agency within the DEWRSB portfolio.

2.9 The Australian Transport Council has been working towards achieving uniform marine safety legislation and practices for vessels not subject to the *Navigation Act* 1912. The arrangement is underpinned by a COAG agreement and given effect through the Safety Sub-Group of the Aust Maritime Group [formerly the National Marine Safety Committee]. This is the national coordinating body for State/Territory marine safety regulation.

2.10 The Safety Sub-Group [SSG] is progressing a national Standard for Commercial vessels that is intended to replace the Uniform Shipping Laws [USL] Code with a common performance based, regulatory framework applying across all jurisdictions to non-Convention size vessels. The SSG is also working towards an agreed framework for nationally consistent marine safety administration.

The Navigation Act 1912

2.11 The Navigation Act provides for the Commonwealth to regulate the **safety** of overseas and interstate voyages by Australian and foreign trading ships. Intrastate voyages are regulated under State/territory legislation. Current application of the Act requires an assessment of each individual voyage made by a vessel. Under the Bill, regulation by the Commonwealth will be based on vessel size, not its voyage pattern.

2.12 For example:

> a) A passenger ship operating solely within the Great Barrier Reef region, whether (a) travelling on a circular cruise to and from the same port or (b) carrying passengers between ports in the same state, is defined to be on an intrastate voyage and the *Navigation Act 1912* does not currently apply to that vessel, regardless of its size. However, the owner may apply for declaration under s8AA of the Act to bring the vessel under the Act.
>
> b) A passenger ship voyaging from Cairns to Darwin, Darwin-Broome and/or Cairns-Broome is on an interstate voyage for the purposes of safety regulation, whether or not it carries passengers on each leg, and regardless of the size of the vessel. The *Navigation Act 1912* currently applies to such voyages. [2]

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1 Supplementary Submission, DTRS, p 1

2 DTRS, supplementary submission, p 1

Recognition of need for reform

2.13 By 1997 there was a recognition that the division of shipping regulation between the Commonwealth, and the states and Northern Territory, resulted in administrative difficulties, causing some confusion for business and the duplication of regulatory activity and costs. Small vessels making only occasional interstate voyages become subject to Commonwealth jurisdiction, while the Commonwealth is not responsible for safety regulation of large trading ships undertaking purely intrastate voyages. Such ships pose substantial safety and environmental pollution risks. It is suggested that State and Northern Territory marine administrations generally do not have as much experience with large ships' structures and equipment, or the requirements of the relevant international conventions, as does the Australian Maritime Safety Authority, which is acknowledged as having the requisite expertise in Australia.[3]

Australian Transport Council

2.14 In 1999, the Australian Transport Council [ATC][4] agreed to a revised arrangement whereby the division of jurisdiction over Australian registered vessels trading on the coast will be based on the tonnage of the vessel rather than the nature of the voyage. A dividing line of 500 Gross Tonnage [GT] was agreed based on the International Convention for the Safety of Life at Sea 1974, the principal international treaty regulating vessel safety, which applies to ships of 500 GT or more. Adoption of the 500 GT limit in the *Navigation Act* 1912 will align Commonwealth responsibilities for trading vessel safety regulation more closely with international obligations[5], while States and the Northern Territory will be responsible principally for non-convention sized ships, ie those under 500 GT. The Commonwealth retains its responsibility for the regulation of all vessels proceeding on overseas voyages.

Provisions of the Bill

2.15 The Bill provides for the following specific amendments to the Act:

a) revised jurisdiction between the Commonwealth and the States and Northern Territory for trading ship safety regulation under the *Navigation Act* 1912*,* such that the Commonwealth is to be responsible for:

i) all trading ships proceeding on an overseas voyage;

ii) all trading ships of 500 Gross Tonnage or more proceeding on an interstate voyage;

iii) Australian trading ships of 500 Gross Tonnage or more proceeding on an intra-State voyage, except where the vessel is not owned by a constitutional corporation and voyages entirely within the limits of a State; and

3 Explanatory Memorandum, p 2

4 The Australian Transport Council comprises the Commonwealth, State and Territory Transport Ministers

5 The International Convention on the Safety of Life at Sea [SOLAS] governs ships of 500GT or more

iv) foreign-flagged vessels under 500 Gross Tonnage that voyage interstate or overseas.

2.16 The Bill further provides:

a) an option for an owner of a trading ship to apply for exemption from the *Navigation Act 1912* and for the Australian Maritime Safety Authority to make a declaration exempting the vessel, subject to such conditions as may be prescribed;

b) an option for an owner of a trading ship of less than 500 Gross Tonnage to apply to come under the *Navigation Act 1912*;

c) application provisions for the *Occupational Health and Safety (Maritime Industry) Act 1993* and the *Seafarers Rehabilitation and Compensation Act 1992*, that are consistent with the *Navigation Act 1912; and*

d) transitional arrangements in the event a State or the Northern Territory is not in a position to enact complementary legislation on the due date.

Impact of the changes

2.17 Changes to the legislation will mean the Commonwealth has safety regulatory responsibility for:

a) ships over 500 GT proceeding on an interstate voyage;

b) all trading ships proceeding on overseas voyages;

c) Australian trading ships of 500 GT or more proceeding on an intrastate voyage, except where the vessel is not owned by a constitutional corporation and voyages entirely within the limits of a State;

d) all foreign registered vessels under 500 GT voyaging interstate or overseas.

2.18 States have primary responsibility for:

a) ships under 500 GT, including interstate voyages by Australian trading vessels;

b) fishing and recreational vessels that undertake interstate voyages.

2.19 The amendments do not extend to the economic regulation of coastal shipping. Nor do they change the current jurisdictional arrangements for Australian fishing vessels, fishing fleet support vessels, pleasure craft or inland waterways vessels, and offshore support vessels.

2.20 The Department describes the effect of the Bill, where regulation by the Commonwealth will be based on vessel size, not its voyage pattern, as follows:

a) A vessel over 500 GT, or over 35 metres if no tonnage is assigned, will come under the *Navigation Act 1912* regardless of whether it is voyaging interstate or intrastate, unless it is subject to a s8AC declaration;

b) A vessel over 500 GT, or over 35 metres if no tonnage is assigned, that is subject to a s8AC declaration will be exempted from safety regulation under the *Navigation Act 1912* and will come under State/NT regulation;

c) A vessel under 500 GT, or 35 metres if no tonnage is assigned, will come under State/NT regulation regardless of whether it is voyaging interstate or intrastate, unless it is subject to declaration under s8AA; and

d) A vessel under 500 GT, or 35 metres if no tonnage is assigned, subject to declaration under s8AA will come under the *Navigation Act 1912*.[6]

Opting in/out provisions and guidelines

2.21 Sections 8A and 8AA [opting in provisions] of the Navigation Act currently allow owners of offshore and trading vessels respectively to apply for a declaration that the Act applies to that vessel. Section 187AA [the opting out provision] allows the owner of a ship to which the Act does not apply to request AMSA to issue a certificate of survey and safety certificates without the remaining provisions of the Act applying to that ship.

2.22 The proposed legislation continues to offer the ability to apply to come within the scope of the Navigation Act, but also recognises that there may be circumstances where a vessel of more than 500 GT is more appropriately covered by state authorities rather than the Commonwealth. Such vessels might include public ferries. There is an option for exemptions to be granted to Commonwealth coverage of vessels where the Commonwealth and relevant State/Territory authority agree that a suitable alternative safety regime should be applied.

2.23 The provisions will be subject to agreed guidelines.

The 'opting out' provision

2.24 Specifically, a proposed new section 8AC of the *Navigation Act* includes an option for an owner of a trading ship of more than 500 GT to apply for a declaration that the Act does not apply to the ship when it is appropriate for the vessel to be under the State jurisdiction. AMSA is able to make such a declaration subject to conditions consistent with prescribed guidelines. The guidelines for the exemption are set out in the Attachment to the DTRS submission.

2.25 Part A of the guidelines restricts applications to opt out to three categories of ships:

a) to trading ships (tourism ships) operating in the Great Barrier reef area or within 30 nautical miles of a port or safe haven;

b) to ships operated by the Crown (principally ferries); and

c) to ships which have been under continuous State or Territory coverage.

2.26 To qualify for exemption, the guidelines require the following:

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6 DTRS, Supplementary Submission, p 1

a) Written confirmation from the relevant State or Northern Territory that the trading ship will be regulated under the State/Territory's marine safety, environmental protection and occupational health and safety legislation;

b) Agreement from the Seacare Authority.

2.27 None of the categories which may apply for exemption is currently covered under the Seafarers or OH&S legislation. The submission from DEWRSB states:

> The guidelines prepared by DOTRS and DEWRSB require that the Seacare Authority provide written advice to the Australian Maritime Safety Authority (AMSA) before a declaration to opt out is granted by AMSA. It is intended that the Seacare Authority would, in giving advice to AMSA, have regard to its statutory responsibility to ensure that employers comply with their obligation to take out workers compensation cover for their employees. That is, the Seacare Authority's responsibility is to ensure that the seafarers remain covered if the employer wishes to opt-out of the Commonwealth jurisdiction.[7]

2.28 The AIMPE has expressed concern at the opting out provision, as it allows shipowners and operators to opt out of Commonwealth workers' compensation and OH&S coverage.

The Seafarers' Rehabilitation and Compensation Act 1992 and the *Occupational Health and Safety (Maritime Industry) Act* 1993

2.29 Both acts focus on the occupational safety of ships' crew and are domestically determined and applied. The Workplace Relations Ministers' Council [WRMC] agreed in 1999 that jurisdiction of seafarers' worker's compensation and occupational health and safety regulations should be aligned with proposed changes to safety regulation to maintain consistency of coverage.

2.30 The draft Bill does not seek to apply these acts to all foreign trading vessels entering or operating in Australian waters, but limits coverage to ships that may be licensed to engage in the coasting trade or where the majority of the crew are residents of Australia and the ship operator is a resident of Australia, has its principal place of business in Australia or is a company incorporated in Australia.

Commonwealth constitutional power

2.31 Commonwealth constitutional power to regulate shipping is to be found in a number of sections:

a) **Section 51(i) -** Trade and commerce with other countries and among the States;

b) **Section 98** – the power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State;

c) **Section 51(xx)** – the corporations power;

d) **Section 51(xxix)** – the external affairs power; and

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7 Submission no 5, p 5

e) **Section 122** – the power to make laws for the government of a territory.

2.32 DTRS argues that, while the trade and commerce power is limited by s92 of the Constitution to international and interstate trade and does not extend to purely intrastate trade, the incidental aspect of the trade and commerce power may be relied on to support a law regulating activities carried out in the course of intrastate trade, where those activities are closely integrated with and cannot be separated from interstate or international trade. For example, the loading and discharge of cargo within a port in connection with an international or interstate voyage, or the conduct of State port control inspections on foreign trading ships in port can be regulated under this power.

2.33 DTRS also argues that, because the external affairs power gives to the Commonwealth the ability to implement international agreements, the Commonwealth has extensive authority to regulate shipping:

> The Commonwealth thus has the constitutional power to comprehensively regulate shipping, with the minor exception of vessel operations entirely within the geographical limits of a State and where the vessel is not owned or operated by a constitutional corporation and is of a size that is under the limits set for application of relevant international conventions.[8]

2.34 However, the ASA submission notes:

> The *1979 offshore constitutional settlement* clarified the jurisdictional responsibilities of the Commonwealth and States with respect to those areas seaward of the low water mark of each State. However, even this action has received critical comment from learned observers of constitutional law in respect of the Commonwealth's powers to effect the *1979 offshore constitutional settlement.* While the *Navigation Act 1912* is based on established Commonwealth constitutional powers, the proposed amendments, based on the size of a vessel, rather than its destination, may be less certain. This warrants careful consideration.

2.35 It is noted that the proposed legislation is the result of extensive Commonwealth/State/Territory negotiations.

Consultation processes

2.36 DEWRSB advises it has consulted widely on the implications of the MLA Bill for OH&S and workers compensation matters, as follows:

> a) In mid 1999, DEWRSB called a meeting of all States and the NT to consider the proposal to align the coverage provisions of the three Acts;
>
> b) Subsequent briefing by DEWRSB of State and Territory Heads of Workers Compensation Authorities (in March and July 2000 and in April 2001) regarding proposals and progress in development of the legislation;
>
> c) Regular briefing on developments to the Seacare Authority, comprising representatives of the two major employer associations (the Australian Shipowners Association and Australian Mines and Metals Association), as well as the Maritime

8 Submission No 2, p 4

Union of Australia [MUA] and Australian Institute of Marine and Power Engineers [AIMPE].[9]

Numbers of ships/employees affected

2.37 DEWRSB, in consultation with the shipping industry, undertook an analysis of the likely numbers of ships and employees which might be affected by the passage of the bill. The findings indicate:

a) Up to 20 ships under 500 GT which currently operate under the Commonwealth provisions could come within State/Territory jurisdiction. This could equate to between 40 and 240 employees;

b) Many operators have indicated that they may choose to stay within the Commonwealth jurisdiction;

c) About 100 ships over 500 GT would come within Commonwealth jurisdiction, approximately 60 of which would be eligible to opt out under the proposed new Section 8AC – up to 400 employees could be affected in this category.[10]

9 Submission No 5, p 2

10 Submission No 5, pp 5-6

CHAPTER THREE

CONCLUSIONS AND RECOMMENDATIONS

Major issues

3.1 Under the Committee's terms of reference, the major issues for consideration are:

a) The change in jurisdictional basis for shipping safety from voyage based/interstatedness to tonnage based and the adequacy of arrangements between States for interstate voyages of ships under 500 tonnes;

b) The constitutionality of the new jurisdiction;

c) The opting out guidelines and numbers affected;

d) The rationale for the amendment to s 284.

Tonnage based jurisdiction

3.2 Adoption of the 500 GT limit in the *Navigation Act* 1912 will align Commonwealth responsibilities for vessel safety regulation more closely with international obligations, while States and the Northern Territory will be responsible principally for non-convention sized ships, ie those under 500 Gross Tonnage.

3.3 DTRS argues that the present jurisdictional arrangement has resulted in some confusion for business, and duplication and unnecessary cost in regulatory activity. For example, the Commonwealth does not have jurisdiction over large trading ships, including foreign ships, operating intrastate, but it does have jurisdiction over very small vessels which trade interstate. At public hearing the departmental representative stated:

> The areas of confusion relate mainly to small ships that would normally operate under a state based regime and might want to make an occasional voyage across a state border. For that particular voyage, at the moment they would come under the Commonwealth Navigation Act. When they enter the other state, they come under that state's regulatory regime. There have been instances that we are aware of where some ships have set out on a voyage believing that they are covered by their home state legislation and either not realising or not caring that, for the interstate leg of the voyage, they come under the Commonwealth regime. That is one area of confusion.
>
> There are also issues of duplication and cost. Very early on in the deliberations amongst the states and ourselves on this issue, we were informed of examples such as a ship going from Victoria to New South Wales, which would start off under Victorian legislation with particular requirements and then cross the border and come under AMSA. It would be subject to an AMSA inspection and perhaps some rulings on equipment or crewing levels required for that leg of the voyage. Continuing its voyage in New South Wales, it would come under the New South

> Wales state regime and again be subject to a third inspection and a third set of rules. So that is where the duplication and cost comes in for the industry.[1]

3.4 The Australian Maritime Safety Authority [AMSA] supports the DTRS submission. AMSA encounters a high degree of confusion amongst ship operators, crew members and the general community about the jurisdictional responsibility for ship safety and argues that the tonnage based system will reflect the day-to-day operational experience and expertise of AMSA and the respective state/territory agencies.[2]

3.5 DTRS also emphasised that the Commonwealth has the necessary expertise to properly regulate large vessels:

> In terms of the second part, the large trading ships, again there were concerns about, particularly, bulk carriers in the Weipa–Gladstone trade, where there were proposals to bring in a foreign flagged ship as relief for one of the Australian registered ships that was going off for its annual survey and dry dock. The concern was that, if a foreign flagged ship, a very large bulker, were operating on intrastate voyages in that sensitive area up in the Barrier Reef region, then it would not come under the Commonwealth Navigation Act now and it would be subject solely to the state's regulation. Then the question arose there of whether the states are fully qualified to regulate vessels of that nature.[3]

3.6 However, AMSA does submit that a number of technical issues may arise under the new jurisdictional arrangements, such as crew qualifications and survey and certification standards, which AMSA intends discussing with State and Territory marine administrations in developing plans for implementing the jurisdictional change.[4]

3.7 The Australian Institute of Marine and Power Engineers [AIMPE] does not support the bill in its current form, arguing particularly against the opting out provisions and expressing concern about the consitutional aspects. The Maritime Union of Australia [MUA] argued against any split in the regulation of shipping, irrespective of the criteria:

> The MUA supports the centralised regulation of the Australian shipping trade by the Australian Parliament. Such regulation is free of the interstate rivalry that is associated with State regulation relating to any form of trade. That principle should not be compromised by factors relating to the tonnage of ships or the nature of the trade engaged upon. Within the constitutional limits of the Australian Parliament all shipping trade having a relevant connection with Australia, whether overseas, interstate or intrastate trade should be regulated by the Australian Parliament.[5]

3.8 The MUA further argues that the criterion of gross tonnage is arbitrary and that the Commonwealth should regulate all shipping except for shipping where there is no constitutional power, ie that operated by persons other than constitutional corporations:

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1 Evidence, RRAT, 9 August 2001, p 3

2 Submission No 4, p 2

3 Evidence, RRAT, 9 August 2001, p 3

4 Submission no 4, p 3

5 Submission no 7, p 1

> We recognise that the international convention for the safety of life at sea in 1974 applied to ships of 500 gross tonnage or more, but assert that there is no logic in an argument that the convention justified the exclusion of smaller ships from Federal regulation.[6]

Worker's Compensation and Occupational Health and Safety Issues

3.9 The DEWRSB submission sets out the impact of the changes in relation to workers compensation and OH&S and proposals currently being negotiated. Much of the detail of the workers' compensation and OH&S matters is still being negotiated between the Commonwealth and state authorities.

3.10 DEWRSB, in supporting the alignment of responsibility, states:

> The move towards closer integration of the maritime safety function and the occupational health and safety function (being just one component of maritime safety), should result in a more consistent approach to ship safety, accident prevention and compliance, aimed at preventing safety incidents and enhancing compliance. Consistent application of all three Acts assists those responsible for management of maritime safety and occupational health and safety.[7]

Constitutional validity

3.11 The Australian Shipowners' Association [ASA] submission raises concerns about the constitutionality of the proposed changes, arguing that the changes based on the size of the vessel rather than its voyage may be subject to challenge. However, the DTRS and AMSA submissions and evidence both confirm the constitutional validity of the proposed amendments. Counsel for the Department advised at public hearing:

> The way the bill is drafted ensures that the provisions come within constitutional power. In particular, proposed subsection 2(1A) sets out the relevant heads of constitutional power that authorise the amendments. There do not appear to me to be any constitutional problems with the amendments.[8]

3.12 The Committee notes that including in the legislation a listing of the constitutional heads of power pursuant to which the Commonwealth may act, does not of itself ensure the validity of the legislation. The substance of the legislation must be within power.

3.13 The Committee is of the view that the legislation would be unlikely to be subject to challenge on constitutional grounds.

The opting out provisions

3.14 The legislation recognises that there may be circumstances where a vessel of more than 500 GT is more appropriately covered under state provisions than under Commonwealth, [eg public ferries]. There is provision for an exemption to be granted to Commonwealth coverage of vessels where the Commonwealth and relevant State/Territory authority agree that a suitable alternative safety regime should be applied. Specifically, a

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6 Submission no 7, p 1

7 Submission No 5, p 2

8 Evidence, RRAT, 9 August, 2001, p 6

proposed new section 8AC of the *Navigation Act* includes an option for an owner of a trading ship of more than 500 GT to apply for a declaration that the Act does not apply to the ship when it is appropriate for the vessel to be under the State jurisdiction.

3.15 The AIMPE expressed concern about the opting out provisions and argued that Parliament should legislate to effect specific exemptions for classes of vessel if that is what is required.[9]

3.16 The Committee notes the AIMPE's concerns, but considers the ability to apply for a declaration that the Navigation Act not apply to a vessel is appropriate in the likely circumstances outlined to the Committee. The Committee also notes the guidelines governing eligibility for a declaration and the procedural requirement that the State in which a vessel, the subject of an application, operates will accept responsibility for the coverage of the vessel.

The impact on Coral Princess Cruises Pty Ltd

3.17 One particular issue which arose during the course of the Committee's inquiry is the impact of the application of the Navigation Act to the Coral Princess Cruises company. The company operates cruises within the Great Barrier Reef and from Darwin to the Kimberleys. While one vessel trades predominantly intrastate, the company may sometimes wish to use this vessel to substitute for the interstate operation. The Kimberley cruises currently bring that vessel within Commonwealth jurisdiction. Under the proposals, both vessels operated by Coral Princess Cruises will come within Commonwealth jurisdiction and therefore the operators will be required to comply with the requirements of STWC 95, which takes effect from 1 March 2002. This means a higher level of certification required for the crew.

3.18 Mr Keith Nielsen, consultant to Coral Princess Cruises, advised the Committee that the result of coming within Commonwealth jurisdiction will have implications for manning and certification levels, given the adoption of STCW 95 by Australia. Mr Nielsen stated:

> In relation to STCW 95, the company has operated boutique cruises along the Queensland coast for 12 years. The vessels were constructed specifically to be under 35 metres in length, as this was the parameter that governed their operations in terms of crewing requirements. Had the vessels been any longer, the crewing requirements would have been such as to render the operations uneconomic. There was no limitation of any kind applied to the tonnage. … In fact, Coral Princess has operated safely and satisfactorily in the near coastal waters throughout its existence.[10]

3.19 Mr Nielsen explained that the changes to the administrative environment will impact on the company to the extent that the economic viability will be jeopardised. Those impacts are:

a) higher level watchkeeping and engineering qualifications required for crew;

b) consequential increased wages bills;

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9 Submission no 6, p 1

10 Evidence, RRAT, 9 August 2001, p 25

c) the potential loss of corporate and vessel knowledge through staff leaving the company for employment elsewhere.

3.20 An option suggested by the company is to exempt 'boutique cruise' vessels from the operation of the *Navigation Act*. However, the Committee considers that a simple and effective solution would be to include a grandfathering clause in the legislation, which would effectively exempt **existing** vessels under 35 metres in length from the operation of the legislation.

The rationale for the amendment to s 284

3.21 The amendment relating to s 284 effectively ensures that s 284 continues to regulate only trading ships engaged on interstate voyages and in effect preserves the status quo. The ASA represents ship owners, operators, ship managers and towage industry.The ASA has particular concerns about the cabotage[11] provisions of the bill. Section 10 of the bill repeals s 284:

> Item 10 amends section 284 of the *Navigation Act 1912* to disapply the revised application provisions of section 2 … and to insert a separate application provision for Part VI which replicates the current application provisions of s2 of the Act. The practical result is that Part VI of the Act continues to regulate only trading ships engaged on interstate voyages.
>
> This item preserves the existing application of Part VI of the *Navigation Act 1912*, which licences or permits ships to engage in the coasting trade. Amendments to Commonwealth-State jurisdiction are intended to apply only to regulation of the safe operation of ships and related matters. Arrangements for the economic regulation of coastal shipping through the existing licensing and permit systems are not to be affected by amendments to section 2 of the Act. The current application of Part VI of the Act is determined by the interaction of sections 2, 7 and 284 of the Act.[12]

3.22 DTRS advises that the Commonwealth Government's policy is to retain the current division of responsibility for regulation of the coasting trade, ie the Commonwealth will continue to regulate only trading vessels engaged in the coasting trade on interstate voyages. It is therefore necessary to introduce a separate application provision for Part VI of the *Navigation Act* 1912 in order to maintain the present arrangements. Item 10 of the Maritime Legislation Amendment Bill 2000 repeals the existing s284 of the *Navigation Act* 1912 and substitutes a new application provision that duplicates the current s2 of the Act in order to retain exactly the same application of Part VI to trading ships on interstate voyages as now exists.[13]

3.23 The ASA's concerns about this provision are:

> Of more concern to ASA is the effect of the proposed new s.284 of the *Navigation Act 1912* (s.10 of the Bill), which quarantines the provisions of Part VI of the

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11 'Cabotage' is the reservation to a country of the control of traffic, in this case coastal navigation, within its boundaries.

12 Explanatory Memorandum, p 7

13 Submission no 2, p 7

> *Navigation Act 1912*, and the vessels that operate on the Australian coast under Part VI, from the provisions of these pieces of maritime safety legislation [ie *Seafarers Rehabilitation and Compensation Act 1992* and the *Occupational Health & Safety (Maritime Industry) Act 1993*].
>
> This raises concern, not so much in its content, but in that it is disturbingly consistent with the piecemeal fashion by which reform in the maritime industry has had to be effected.[14]

3.24 The Committee notes an amendment to delete those changes in Item 10 of the Bill has been proposed during debate in the House of Representatives. This amendment was defeated in the House of Representatives.

3.25 The Opposition members of the Committee note that Part VI currently applies in accordance with the jurisdiction arrangements in Section 1 that apply to the whole Act. The practical impact of this application is that Part VI has not applied to vessels, regardless of their size or nation of origin, operating the coastal trade on intrastate voyages – a situation that has been viewed as a loophole in the Navigation Act. Item 10 will maintain this situation and result in two separate jurisdictions – one for cabotage provisions based on voyages and one for all other regulation based on the size of the vessel.

3.26 The Opposition members of the Committee consider that the continuing distinction will cause confusion in the application of the Act. Support for the amendment also makes it the active intent of the Parliament to apply Part VI in this manner, whereas the voyage distinction only ever applied on the basis of consistency with the whole Act. There is no logical basis for a separate application of Part VI for intrastate voyages.

3.27 While the Government members acknowledge the position of the Opposition members, it should be noted that this bill is concerned with the regulation of shipping safety. Part VI of the Act applies to the economic regulation of shipping and matters concerned with Part VI are not within the scope of the agreement with the states which relates to this bill.

The competitiveness of Australian shipping

3.28 The major issue of concern to the ASA, which underpins its submission, relates to the competitive disadvantage of Australian shipping vis-à-vis foreign trading vessels. The ASA suggests that, the *Navigation Act 1912,* in combination with other legislation, puts Australian shipowners at a competitive disadvantage, and argues that it is this competitive disadvantage that should be addressed. The ASA argues that amendments before the Committee should be focussed on addressing this competitive disadvantage.

3.29 While not an issue in this bill, it is one of major concern to the ASA. They argue that the current regulatory arrangements disadvantage Australian shipping operators vis-à-vis foreign owned ships' and recommend a review of the situation in which Australian ship operators find themselves.[15]

3.30 While the ASA submission acknowledges that the amendments are consistent with international standards, it raises the following concerns:

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14 Submission no 1, p 2

15 Submission no 1, p 13

a) The extent of Commonwealth constitutional power to make the proposed amendments;

b) The impact on the Seafarers and OH&S [MI] Acts, noting that vessel safety and competitive conditions in which a vessel operates are very subjective notions; and

c) the effect of the proposed new s 284 of the *Navigation Act 1912* (s.10 of the Bill), which quarantines the provisions of Part VI of the *Navigation Act 1912*, and the vessels that operate on the Australian coast under Part VI, from the provisions of these pieces of maritime safety legislation. The submission notes that 'this raises concern, not so much in its content, but in that it is disturbingly consistent with the piecemeal fashion by which reform in the maritime industry has had to be effected'.[16]

3.31 The submission also points out that because foreign vessels can operate interstate and intrastate by obtaining a single or continuing voyage permit, they can carry interstate cargo without having to obtain a licence. This 'loophole' means that an increasing amount of coastal cargo is being carried by foreign vessels. The ASA notes that:

> Ship operating costs comprehended a series of cost differentials between Australian and foreign vessels which taken together indicated a substantial cost disadvantage to the Australian vessel.[17]

3.32 Fiscal measures to assist the industry were removed from 1 July 1996; two reports to government from the Shipping Reform Group were presented in April 1997 and April 1999, the government confirmed that no fiscal measures would be made available to the Australian shipping industry. The submission notes:

> The response of industry has been to propose that, if foreign participation at foreign cost levels using foreign labour at foreign rates of pay are to be allowed to operate *in Australia's interstate and intrastate transport industry*, Australian operators ought not be prevented from competing with such operators by Australian legislation which imposes costs which foreign competitors are facilitated in avoiding but which are imposed on Australians.[18]

3.33 The submission further argues, because of changed trading patterns and the liberalised regime for obtaining permits, the legislative regime currently in existence 'actually disadvantages Australian vessels in operating in Australia and actually disadvantages Australians seeking to operate ships in *Australia's interstate and intrastate sea transport industry compared to their foreign competitors whose participation is facilitated by the permit system under Part VI of the Navigation Act*'.[19]

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16 Submission no 1, p 2

17 Submission no 1, p 6

18 Submission no 1, p 7

19 Submission no 1, p 7

3.34 The ASA identifies 10 pieces of legislation which combine to disadvantage Australian shipping vis-à-vis foreign shipping and concludes that 'a review be undertaken with the objective of relieving the competitive disadvantage imposed on Australian ship operators by Australian law'[20].

3.35 The Committee notes the evidence from DTRS that they are aware of the issue in relation to claims that vessels are operating on the coast under different provisions for whether you are a foreign vessel on an international voyage as opposed to an Australian vessel. The Department has also advised that it is currently undertaking an assessment of that matter and will be providing advice to the minister in the near future.[21]

Recommendation

3.36 The Committee recommends to the Senate that the Maritime Legislation Amendment Bill 2000 be enacted subject to the inclusion of a grandfather clause to cover existing ships under 35 metres in length to be eligible to apply for a declaration under section 8AC of the *Navigation Act 1912,* such that the vessel is exempt from the *Navigation Act 1912* and by extension from the Seacare legislation.

3.37 The Opposition further recommends an amendment to delete section 10 of the proposed Bill. This part of the recommendation is not supported by the Government members of the Committee.

Senator Winston Crane

Chairman

28 August, 2001

20 Submission no 1, p 7

21 Evidence, RRAT, 9 August 2001, p 5

APPENDIX ONE

SUBMISSIONS

Submission number	Author
1	Australian Shipowners Association
2, 2A	Commonwealth Department of Transport and Regional Services
3, 3A	Coral Princess Cruises
4	Australian Maritime Safety Authority
5	Department of Employment, Workplace Relations and Small Business
6	Australian Institute of Marine and Power Engineers
7	The Maritime Union of Australia

APPENDIX TWO

HEARINGS AND WITNESSES

Canberra, 10 August 2001

Australian Maritime Safety Authority

Mr Chris Blower, Corporate Secretary
Mr John Timms, General Manager

Australian Shipowners Association

Mr Lachlan Payne, Chief Executive
Mr Trevor Griffett, Manager, Development and Operations

Commonwealth Department of Transport and Regional Services

Dr Gregory Feeney, First Assistant Secretary, Cross-Modal and Maritime Transport Division
Mr Geoff Toomer, Senior Policy Officer, Cross-Modal and Maritime Transport Division

Mr Frank Marris, Senior General Counsel, Office of General Counsel, Australian Government Solicitor

Coral Princess Cruises

Mr Keith Nielson, Consultant

Department of Employment, Workplace Relations and Small Business

Mr John Rowling, Assistant Secretary, Safety and Compensation Policy Branch
Mr Rod Pickette, Manager, National Occupational Health and Safety and Workers Compensation Policy Team