

# Shipping Reform Industrial Compact

## *Preamble*

The Australian domestic shipping fleet has contracted to a point where, without significant multi party cooperation, the demise of the industry to a level of irrelevance will occur sooner rather than later.

However, with goodwill and an appropriate degree of compromise and concession by all of the stakeholders, an Australian shipping fleet that can compete for and participate in the world's 4th largest shipping task can be achieved.

The contributions to achieve this end will involve a degree of effort on the part of all parties.

The Federal Minister for Transport, Minister Anthony Albanese, has announced that he will, subsequent to receiving advice from the three reference groups which he has established to identify the required reform in the areas of Regulation, Taxation and Workforce and Training, propose the legislation necessary to achieve those reforms. He has made it clear that the presentation of that legislation to the Parliament will be subject to the establishment of an industrial compact between the industrial parties that will deliver productivity and efficiency improvements in the industry such that the environment would be sufficiently attractive to see owners invest in new tonnage and replace foreign services with local services. This will ensure that the Australian economy and all of the participants in the industry can benefit.

This document represents that compact. It is a component of the Minister's proposed reforms that is critical to achieving the growth of a competitive/efficient/productive Australian shipping industry, commensurate with the shared vision of the parties. While it is not conclusive in some aspects, that is necessarily the case, as some of the agreed elements will require further work, such as regulatory review and possibly further legislative amendment, it sets the industry on a path to recovery and growth.

## **THE COMPACT**

The elements of this Compact are inseparable.

That is to say that this document represents what the parties see as a balance of concessions and benefits that are required to meet the productivity reform objectives as a package. It is a delicate balance that represents the investment of significant political and financial capital and should not be lightly taken.

### **1 COMMITMENT TO A FUNCTIONAL LABOUR MARKET**

The Australian bluewater shipping industry needs to be cost competitive with foreign ships if it is to survive and thrive. The largest cost differential between Australian and foreign ships is the cost of wages. The Australian bluewater fleet is facing a renewed challenge in terms of keeping labour costs down in light of substantial increases in wages paid in the offshore sector.

The core competencies that result in the qualification and certification of seagoing workers (deck, engine, ratings) are the same for all seafarers of a given discipline regardless of what vessel they work on. The skills / qualifications are transferable between the bluewater and offshore sectors.

As with all markets, distortion in one area will affect other areas. A substantial increase in the remuneration in one area will make it a more attractive employment prospect and the lower paying areas (such as bluewater) will struggle to retain staff. The pressure to retain staff will result in retention strategies being developed that will increase the employment cost for bluewater employers. Increasing the employment costs will increase the uncompetitive gap between Australian crews and foreign crews, making it more difficult for shipowners to employ Australian seafarers. If it is too expensive to employ Australian seafarers, shipowners will look at other options such as using foreign ships. If using Australian ships is too expensive cargo interests will use foreign ships or consider land transport options.

The future of Australian seafaring jobs is critically linked to the ability for bluewater employers to retain seagoing staff at reasonable employment costs. Keeping employment costs reasonable is inextricably linked to the wages paid in sectors reliant on the same labour market.

A key difference between the bluewater and offshore sectors in terms of labour costs is that the offshore sector is not subject to competition from foreign seafarers. The nationality of crews working on vessels operating within Australia is currently inconsistently determined depending on which 'sector' of the industry the vessel is deemed to be working within.

Further, the peak, short-term spikes in activity in the offshore oil and gas sector – particularly during exploration and construction – result in a sharp increased demand for skills over a short timeframe. Seafarers take years to train and short term spikes cannot be accommodated by the 'core' industry which does not have, and cannot support, excess capacity when the spike in demand disappears.

*The Stakeholders agree:*

- *that anything that distorts and destabilises the labour market across the various sectors that rely on seagoing skills will be avoided;*
- *to the more efficient utilisation of existing capacity, including those measures outlined in this section below.*

### 1.1 Offshore Specific Regulation

The stakeholders agree that the nature of the Australian offshore industry creates particular challenges to the Australian maritime industry, particularly as it is the largest user of maritime skills.

*The stakeholders agree:*

- *to support [the creation of specific regulation to alleviate the critical skills shortage currently experienced within the industry;*
- *that such regulation should focus on distinguishing between operations which form part of the 'fabric of the Australian industry' and short-term project work and the appropriate employment arrangements that should apply to each.*

### 1.2 Ghost Crews

The artificial requirement for ship operators to engage a 'ghost crew' to shadow crews engaged in specialised maritime operations is not consistent with the productivity objectives of the reform package which are to promote efficient and competitive shipping operations and use of labour.

*The stakeholders agree that:*

- *there will be no industrial requirement to maintain crewing levels or shadow crew above the operational requirements of a vessel engaged in specialised maritime operations.*

### 1.3 Riding Gangs

As a participant in the global maritime industry, Australian vessel operators require the ability to manage and operate their fleet in accordance with international best practice. All stakeholders acknowledge that from time to time it may be essential for the proper maintenance and operation of a vessel that specialist maintenance crews be engaged on board a vessel. This is common practice in the global maritime industry and allows shipping operators the flexibility to engage specialist maintenance crew across their fleet on terms and conditions that are internationally competitive, consistent with the policy objectives of the reform package.

*The stakeholders agree that:*

- *specialist maintenance crew are able to be engaged to perform specialist maintenance as determined necessary by the ship operators;*
- *employment of international personnel capable of performing such maintenance will be on terms and conditions appropriate to international maritime crews which may be an ITF or other international agreement;*
- *employment of such crews will extend across both international and coastal operations.*

#### 1.4 Manning Levels

The primary concern of all stakeholders is the safe and efficient operation of the vessel, and manning levels should first and foremost ensure this fundamental principal is met. Australian vessels must be manned to a safe level and no less than the prescribed number in the applicable safe manning certificate if one has been issued.

All stakeholders acknowledge that safe manning as determined by the Flag State regulator will be the accepted baseline crew compliment for a vessel to sail.

The stakeholders acknowledge that there is currently a critical skill shortage in some disciplines/ranks within the Australian maritime industry. This shortage:

- makes it difficult to maintain the current fleet, let alone the projected increase in light of the shipping reforms set to commence from July 2012.
- is exacerbated by vessels involved in inshore operations, for example tug boats, being required, by virtue of industrial pressure, to engage crew with high level AMSA qualifications when a lower, state based qualification would be sufficient.

Ensuring the existing skills base is appropriately engaged across the sector will help address the short term skills issues and provide a level of efficiency for the future state of the industry.

*The stakeholders agree:*

- *to allow appropriately qualified crew to work in occupations without industrial pressure to use crew of higher qualification;*
- *that manning levels on ships be set by assessment of the safe operation of the vessel and not by artificial industrial constraints regarding specific roles.*

#### 1.5 Crew to Berth and Leave Ratios

The leave entitlements in the Australian maritime industry are well in excess of international standards and other Australian industries including shift workers. This creates unnecessary pressure on labour demands as the crew to berth ratio is pushed in excess of 2-1. In domestic operations a crew to berth ratio of 2-1 or less allows employers to schedule vessel usage, maintain consistency of crew and rostering arrangements and ensures a lesser reliance on casual labour to cover the difference when crew to berth ratio is greater than 2-1.

There may be some circumstances as determined by the ship operator when a ratio of 2-1 is not maintained and additional seafarers of a particular rank are carried, but such occurrences are to be determined by the operator in accordance with the operational needs of the vessel.

*The stakeholders acknowledge that:*

- *a crew to berth ratio of 2-1 or less allows for the effective and efficient use of an organisations' labour resources while providing seafarers a more than acceptable period of leave;*

- *there needs to be a greater acceptance from all parties of “buying out” of leave (by agreement).*

***The stakeholders agree that:***

- *a crew to berth ratio of 2-1 (or less) will be agreed in future EBAs.*
- *“buying out” of leave (by agreement) will be facilitated in future EBAs.*

## **2 INDUSTRY AND SHIPBOARD CULTURE**

It is in the national interest for Australian seafarers to be recognised as skilled, hardworking and dedicated seafarers able to work with other seafarers from all over the world, increasing Australian presence in the global industry.

A culture of respect amongst the industry is the first step in gaining recognition and respect for the work of the Australian shipping industry from governments and other industry sectors.

A culture of respect for the job and for ones’ colleagues should spread not only from a head office to crew structure, but also on-board from the senior officer down.

### **2.1 Dispute Resolution**

In keeping with the commitment of the parties to this Compact to maintaining reliable and consistent shipping services across the Australian maritime industry, the stakeholders acknowledge that workplace disputes including but not limited to negotiating new enterprise bargaining agreements need to be resolved in a timely manner where the withdrawal of labour is to be considered only as an absolute last resort.

By committing to participating in an independent conciliation and/or arbitration process the stakeholders recognise the importance of maintaining productivity in periods of dispute.

***The stakeholders agree that:***

- *they will submit to an independent conciliation process as a minimum to try to resolve any dispute prior to considering industrial action; They will consider whether referral to FWA for arbitration is appropriate having regard to the nature of the dispute;*
- *in respect of disputes during the bargaining process – a dispute resolution clause will be inserted in enterprise agreements prescribing arbitration by Fair Work Australia as the agreed form of resolving disputes arising out of the bargaining process between industrial parties. ‘Bargaining process’ is to be broadly defined as including the process of the negotiation between an employer and employees or their representatives with a view to the parties entering into an enterprise agreement under the Fair Work Act, once any prior enterprise agreement passes its nominal expiry date.*

### **2.2 On Board Management of Crew**

The stakeholders recognise that critical to ensuring the safe and efficient operation of a vessel is the ability for senior staff to effectively manage the crew on board. Consistent with well entrenched shore based expectations with respect to the ability of management to manage its workforce, the stakeholders agree that the principal form of management of seafarers will occur on board the vessel.

All stakeholders support the ability of the Master to manage the crew via appropriate on board management processes.

***Stakeholders agree:***

- *to direct seafaring staff to participate and abide by on-board management processes.*

- ***that onshore union officials or company HR officers will only involve themselves in issues arising onboard once shipboard management and grievance avenues have been exhausted.***

### 2.3 Merit Based Employment

The stakeholders acknowledge that the essential element of enterprise based employment is the ability of the prospective employer to recruit, retain and promote employees in accordance with the requirements of the enterprise. The selection of employees to perform work on board vessels is to be undertaken by the prospective employer against criteria determined by the prospective employer.

***The stakeholders agree that:***

- ***there is to be no industrial constraint on the selection and promotion of the most suitable candidate to a position;***
- ***employers are free to transfer qualified seafarers between vessels in a fleet;***
- ***there is to be no industrial pressure placed on individuals not to offer themselves for employment / promotion.***

### 2.4 Code of Conduct to Protect Crew

It is the stated intention for parties to this Compact and the wider maritime community that all vessels, which are the workplaces of Australian seafarers, be free from risks to health and safety. This not only includes the physical safety of all on board but also the right to perform their duties without undue pressure, harassment and hostility in a way that protects the seafarer's general health and wellbeing.

As the company has entrusted the Master and senior officers with the safe and efficient operation of the vessel, these officers have the delegated authority to manage the crew to meet the expectations of the company. A commitment from all on board to abide by a code of conduct will create a safe and productive working environment.

***Stakeholders agree:***

- ***To actively encourage a culture of respect across an organisation;***
- ***To actively encourage a culture of respect across occupational groups;***
- ***Direct seafaring staff to adhere to the reasonable instructions of those in the senior operational positions;***
- ***To develop a code of conduct that will create a safe, respectful and productive working environment.***

### 2.5 Productivity

Recognising that proposed legislative reforms may create a regulatory environment in Australia that is conducive to the establishment of shipping enterprise, the stakeholders acknowledge that unless there are agreed and measurable productivity gains and targets in this Compact, no increase in shipping enterprise is likely to occur.

The stakeholders agree that they will engage constructively to identify and commit to opportunities where productive changes and reforms to existing practices and conditions can and will be made, that will ensure a sustainable and enduring shipping enterprise can be developed under this Compact.

*The stakeholders agree that:*

- *All employees are to work harmoniously as part of a team, and will work the hours necessary to ensure the safe operation and effective maintenance of the vessel, within the accepted guidelines for the management of fatigue;*
- *There is to be no artificial restriction on the efficient allocation and placement of ship-board labour;*
- *Policies for the control of Alcohol and Drugs to be in accordance with international shipping regulations and best practice;*
- *Company HSEQ policies to be rigorously complied with at all times.*

### **3 ENTERPRISE NEGOTIATIONS**

The industry norm is that terms and conditions of employment are contained in enterprise agreements negotiated in accordance with the provisions of the Fair Work Act 2009. That Act permits enterprise agreements to be negotiated with one or more employee organisations entitled to represent the interests of employees. The current industry practice is that enterprise agreements are negotiated with each employee organisation, in most cases resulting in three different agreements to cover employees on the one vessel.

*The stakeholders agree that:*

- *upon the request of an employer, all maritime employee organisations will engage constructively with the employer to facilitate one enterprise agreement covering all employees at the enterprise.*

### **4 TOTAL EMPLOYMENT COSTS / OVERHEADS**

As noted in Section 1, the cost differential between the employment cost of Australian crews and foreign crews places pressure on Australian operators trying to compete in the same markets. The stakeholders acknowledge that there are a range of matters that increase overall employment costs of Australian crews and that it is the interests of a competitive industry to moderate these overheads as far as possible.

#### **4.1 Redundancy**

The stakeholders acknowledge that the payment of severance payments in the instance of redundancy is a longstanding entitlement in a number of Australian industries. The introduction of the Fair Work Act 2009 including the National Employment Standards has enshrined redundancy and severance entitlements in federal legislation.

The industry redundancy entitlements are significantly higher than the community standard. The stakeholders acknowledge that severance entitlements in circumstances of redundancy should be in line with community standards and capped at a reasonable level which allows business to restructure according to their operational needs and appropriately compensate employees who lose their employment as a result.

In addition, where through the efforts of an operator in the midst of a restructure suitable alternative employment is obtained, provided service is recognised an employee affected by a restructure will not be entitled to a severance payment.

*The stakeholders agree that:*

- when negotiating enterprise agreements the community standard of redundancy entitlements will be recognised and an outcome will be negotiated accordingly.*

- ***enterprise agreements negotiated in the future will reflect the principle outlined above regarding suitable alternative employment;***
- ***that suitable alternative employment includes transfer within a company's fleet.***

#### 4.2 Superannuation

The stakeholders acknowledge that the current enterprise negotiated rates of superannuation are far in excess of the current community standards which, as a general rule, are the statutory minima. Further, some of the benefit options available in Maritime Super offer a hybrid between employer and member contribution which add to the employment costs.

The stakeholders acknowledge that the recent increases in superannuation payments are unsustainable in the future and that the projected increase in the statutory minima (from 9% - 12%) over the next 8 years will not be passed on to rates already significantly in excess of this minima.

***The stakeholders agree that:***

- ***Future increases in superannuation payments in EBA negotiations will be moderated as one means of restraining total employment cost.***

#### 4.3 Wage Levels for Junior Officers

Critical to Australia adopting a leading role in the international maritime industry is the ability of this country to produce quality officers from our training institutions and maritime fleet. It is acknowledged by all stakeholders that the Australian maritime industry is currently experiencing a critical skills shortage, particularly for deck and engineer officers. One of the impediments is the high cost of training and the subsequent high salaries paid to newly 'graduated' officers. This results in a distortion of relativities driving wages across the board even higher.

***The stakeholders agree:***

- ***To review graduate wage rates so that more focus is placed on experience rather than rank which will encourage employment of trainees/cadets and officers with limited experience.***

#### 4.4 Seafarer's Compensation Scheme

All of the stakeholders agree that seafarers who suffer a work related injury or illness should be properly compensated. It is noted that there is in existence legislation in every State and Territory that to a greater or lesser extent provides compensation to employees who suffer such injury or illness.

There is, however, a disparity between the compensation benefits available in State and Territory based compensation regimes, which are applicable to the overwhelming majority of Australian workers, and the entitlements available under the Seafarers Compensation and Rehabilitation Act (Seacare Act).

Some of the key differences are:

- Unlike the Commonwealth (Comcare – the scheme on which the Seacare Act is based) and WA compensation schemes, the Seacare regime results in an employer excess which varies between employers;
- The weekly benefit rates derived from the Seacare Act are more generous than State schemes particularly with regard to the period for which normal weekly earnings are payable;
- The Seacare Act does not place limits on medical and hospital costs;

- For all practical purposes, the Seacare Act does not allow redemption of future loss of wages. Many state regimes have provision for the settlement of weekly benefits in a lump sum;
- Comcare provides for a central insurance fund while the Seacare regime requires employers to be insured with, or indemnified by an insurer authorised under the Insurance Act 1973 (Cth); or a member of a protection and indemnity association that is a member of the International Group of Protection and Indemnity Associations.
- Most compensation regimes require that employment be a 'significant contributing factor' to an injury in the workplace. Presently under the Seacare Act the workplace injury must merely arise out of or in the course of employment. Further, there is sufficient uncertainty around compensation payable when an employee suffers from 'disease' and the occasions when employment is taken to contribute to a material degree to the contraction of the disease.
- The special circumstances of seafarers is that the workplace is also their home for the duration of their swing and it is a workplace that does contain some inherent dangers and is not conducive to seafarers returning to work on light duties, making rehabilitation challenging.

The nature of the existing seafarer's rehabilitation and compensation legislation has promulgated an environment whereby:

- Potential liabilities, which can be incurred under the Seacare Act, are such that it is becoming an uninsurable risk. This is evidenced by the previous inability of the Commonwealth to secure insurance for the Safety Net compensation fund established under the Seacare Act.
- Because of the open-ended nature of the benefits, insurers are reluctant to insure the workers compensation requirements of the shipping industry. This has reduced the level of policy competition and increased premiums.
- The increasing cost of premiums has caused industry to restructure policies so as to reduce premiums and significantly increase the level of deductibles. This results in employers self insuring a significant component of the workers compensation risk. (i.e. below deductible compensation)
- The Seacare Act imposes liabilities and costs on Australian employers that are in excess of those borne by foreign employers with whom Australian employers increasingly compete.

Accordingly, the stakeholders acknowledge that:

- the sustainability of the scheme would be best served if the scheme structure had greater parity with Australian community standards generally;
- cost pressures from the scheme would be reduced if the scheme structure allowed the re-engagement of international P&I clubs specifically, which is critical to ensuring a globally competitive insurance market is available to Australian operators;
- this can be achieved through the creation of regime that provides sufficient certainty around risk and liabilities so as to attract a broad range of insurers, to provide insurance coverage within the Australian scheme.

*Stakeholders agree:*

- *To participate in a review of the Seacare Act and Regulations with a commitment to recommending amendments necessary to facilitate the reduction of insurance costs generally and the re-engagement with international P&I clubs;*
- *That the review will not disadvantage any employee with an existing accepted claim under the Seafarer's Compensation Scheme, and that any transitional arrangements must provide accordingly.*

## 5 TRAINING

The stakeholders agree that efficiency improvements are possible in the current training structure of Australian seafarers, and that every area of potential efficiency improvement ought to be considered with a view to increasing training numbers and reducing the unit cost of training.

*The stakeholders agree:*

- *that workforce planning at an industry level is essential to understanding the training requirement – actual numbers and in which discipline and commit to engaging with industry level workforce planning;*
- *to identify areas where the cost of training to the employer can be reduced and implement changes to give effect to this cost reduction;*
- *that not all fees associated with training should be borne by the employer;*
- *that not all training needs to be conducted on an employer funded basis;*
- *to provide professional oversight to all individuals undergoing training regardless of their employment status; and*
- *to maintain the quality of existing training outcomes.*

## 6 AUSTRALIAN INTERNATIONAL SECOND REGISTER

All stakeholders agree that the creation of the Australian International Second Register will allow strategic control of shipping operations to take place from Australia, with operational arrangements such that the provision of shipping services is cost competitive with international operations.

*The stakeholders agree that*

- *Employment on AISR ships will be at ITF rates and conditions.*

Agreement

The stakeholders agree that the principles set out above are critical to ensure the safe, efficient and viable operation of the Australian maritime industry and all stakeholders' commit to adhering to the principles set out herein.