AIMPE SUBMISSION

regarding

Coastal Shipping Reforms

Discussion Paper 2017

Prepared by Mr Martin Byrne, Federal Secretary

Background

The Australian Institute of Marine and Power Engineers is the registered organisation which represents qualified Marine Engineers throughout Australia. AIMPE came together as a national body in 1881 after several years during which local organisations were formed in the various colonies of Australia and New Zealand.

AIMPE members operate, maintain and repair marine vessels of all sorts including commercial ships of all types and sizes as well as vessels dedicated to the offshore oil and gas sector, tugboats, dredges, ferries, defence support craft, research vessels and Border Force vessels.

AIMPE appreciates the opportunity to make a submission to the Government about the Coastal Shipping Reforms Discussion Paper 2017 because the coastal shipping sector remains a key sector of the Australian maritime industry and it is widely accepted that the 2012 legislation has failed to revitalise the coastal shipping sector.

1. Introduction

AIMPE opposes the main thrust of the Coastal Shipping Reforms Discussion Paper released by the Minister for Infrastructure and Transport Hon. Darren Chester on 21st March 2017. This latest Discussion Paper proposes to retain the basic structure of the 2012 legislative package whilst removing certain regulatory requirements in the name of efficiency.

It is widely accepted that the 2012 legislative package has failed to "revitalise Australian Shipping" [see Appendix 1 for a summary of the outcomes of 5 years of the Coastal Trading Act 2012]. The end result of the approach proposed in the Discussion Paper will be to increase the penetration of foreign shipping into the Australian coastal trades and further reduce the remaining Australian flag coastal shipping fleet.

AIMPE believes that Government policy formulation in relation to the Shipping industry has suffered from being overshadowed by the big spending portfolios of roads and railways. In order to address this problem, AIMPE recommends the creation of new Minister for Shipping with a brief not only to regulate the maritime industry in Australia but also to promote Australian flag shipping and the Australian maritime industry generally.

2. Specific Responses

The proposal to allow Temporary Licences for single voyages (paragraph 1) is nothing less than a return to the old "Single Voyage Permit" system. It is true that the 5 voyages requirement for Temporary Licence applicants has not succeeded in encouraging more Australian flag shipping. Foreign ship operators have simply adapted to the requirements [if a little reluctantly]. This proposal will not increase the viability of Australian flag shipping. ***AIMPE opposes this proposal***.

The proposal to 'streamline' the requirement to notify all General Licence holders and other stakeholders of each Temporary Licence application (paragraph 2) will allow the processes to take place behind a veil of secrecy. This is a move which will reduce transparency. ***AIMPE opposes this proposal***. One thing that all economists can agree upon is that information is the key to competitive markets. When information is suppressed economists apply the label 'imperfect competition'. The information about new applications [and variations of applications] should continue to be circulated to the current recipients.

Indeed there is a strong argument that the quality of competition in the market might be improved if every application was posted on the Department's website so that potential new operators not currently General Licence holders would also be able to view trading opportunities. AIMPE recommends that all Temporary Licence applications should be posted on the Department of Infrastructure and Regional Development's Maritime website.

The proposal to 'streamline' the variation process into a single process (paragraph 3) and reduce the time frame to one day has some potential pitfalls. It is a proposal which could be subject to abuse and could disadvantage an Australian ship owner who might be able to offer a vessel for a particular cargo. There is a very big difference between a request for a Temporary Licence to load 5 cargoes of 50,000 tonnes and a request for a Temporary Licence to load 10 cargoes of 25,000 tonnes. The first request would eliminate a large number of smaller vessels which would be able to provide the service under the second set of parameters. ***AIMPE does not support this proposal***.

The proposal to change the requirement relating to voyage notifications (paragraph 4) so that they are only required if there are changes to previously supplied details makes sense. The operator is still required to submit a voyage report after completion of the voyage and this is the important information that is then placed on the public record. ***AIMPE supports this proposal***.

Amending the tolerance provisions in the current regulations as proposed (paragraph 5) suffers the same risk as the proposed 'streamlining' of the variation process. The ultimate voyage carried out may bear no resemblance to the original voyage for which the Temporary Licence was granted. ***AIMPE opposes this proposal***.

Regarding the proposal (paragraph 6) to remove the concept of the Emergency Licence – the nature of critical emergencies is that they are unpredictable. It is fortunate that Australia has not had a critical emergency since 2012 in the nature of Cyclone Yasi when shipping of relief supplies was required because road and rail lines were cut. The assumption underpinning the proposal is that the type of vessels required for the response will be available among the existing fleet of General Licence and Temporary Licence vessels – and that the vessels will be available to respond to the emergency. ***AMPE does not support the proposal***.

The discussion paper also proposes (paragraph 7) an extension of the geographical reach of the Coastal Trading Act. The concept of trading voyages between two ports reflects the nineteenth century British merchant shipping legislation. In the last quarter of the twentieth century the Australian offshore oil and gas industry emerged and developed and it is now the largest sector within the Australian maritime industry. However ***AIMPE would go further and urge that the Act apply to all commercial operations within Australia's Exclusive Economic Zone***.

Paragraph 8 of the Discussion Paper addresses the issue of dry docking of foreign flag vessels in Australian dry dock facilities. AIMPE supports the increased use of Australian dry docking facilities. However AIMPE does not agree that foreign flag ships should be exempt from the prohibition on the importation of asbestos containing materials into Australia. ***AIMPE opposes the proposed amendment as it would undermine the current prohibition on the importation into Australia of asbestos containing materials***. It is not in Australia's national interest to once again expose workers in dry docks to the lethal dangers of asbestos. Asbestos was a blight in the past – it should not be allowed to return to Australia.

The notion that voyage reports should include the vessel's IMO number is sensible and should be a 'no-brainer'. It is a minor change to require Temporary Licence holders to include the vessel IMO number in their voyage reports. This is a very minor bureaucratic change which should not require Parliamentary action.

The Discussion Paper also raises some "Potential Seafarer Training Initiative Options". However this section of the Paper does not provide any prospect of jobs for Australian seafarers. Training without a viable Australian flag maritime industry will be training for nothing. The reason that maritime training has plummeted in recent years was that successive Federal Governments had kept the skilled maritime classifications of Ship's Engineer (ANZSCO 231212) Ship's Master and Ship's Officer on the SOL and CSOL lists. Hundreds of temporary work visas were issued over several years to allow employers to import guest labour in these classifications into the Australian maritime industry. Existing skilled and qualified Australian officers have been made redundant and guest labour has been employed. As long as this low cost option was open, it was exploited by those operating commercial vessels in Australia.

The changes to the temporary worker visa system announced by Prime Minister Turnbull in April 2017 mean that this option is now effectively closed. As a consequence more job opportunities should become available for qualified Australian maritime officers. It appears that the Government has closed this loophole and put an end to the exploitation of guest labour in the Australian maritime industry.

However for employers in the coastal shipping sector in Australia to revive their training programs it will require a great deal more certainty about the future prospects of the sector. The best way for this to be achieved would be for cross-party support for new Cabotage laws for Australia which limit foreign shipping involvement in the coastal trades and maximise Australian flag shipping instead.

3. Conclusion

The Coastal Trading Act 2012 has not delivered an effective regime for the revitalisation of Australian flag shipping. One key shortfall of the current regulatory regime is that the Shipping Registration Act requires all vessels *owned* by an Australian citizen or an Australian company to be registered in Australia. If ownership of a ship is transferred to an overseas owned entity then the obligation to register is avoided.

By contrast other forms of transport which *operate* in Australia are required by Australian law to be registered in Australia. All aircraft that operate in Australia are required to be registered in Australia and comply with all Australian laws. All road vehicles that operate on public roads in Australia are required to be registered in Australia and comply with all Australian laws. **The Shipping Registration Act should be amended to require that all vessels operating in Australian waters [the waters of Australia's Exclusive Economic Zone] should be required to be registered in Australia and comply with all Australian laws.** This would provide a solid basis for the Australian maritime industry.

The users of Australian coastal shipping want the lowest possible freight costs. The current regulatory arrangements deliver this by allowing foreign companies to operate foreign flag ships on the Australian coast with guest labour. The foreign companies arrange their finances so that they do not pay company tax in Australia. The coastal shipping freight earnings of the foreign companies flow out of Australia. The foreign seafarers they employ do not pay tax in Australia. These individual earnings flow out of Australia.

The granting of Temporary Licences to the operators of foreign flag ships to participate in the Australian coastal trade is tantamount to a tax exemption. However the Treasury and ATO do not know how much tax is lost to the Australian economy by this sweeping tax exemption power. All other Australian taxpayers have a higher relative tax burden because of the exercise of this de facto power to authorise tax exemption.

A measure of the economic cost of Australia's almost total reliance on foreign shipping in the international and coastal trades can be seen in the national accounts which do record the amounts of debits and credits in relation to freight transport out of and into Australia. Australia's freight debits are approaching $10 billion per annum while Australia's freight credits are declining towards $200 million per annum. The deficit is over $9 billion per annum.

Requiring all commercial vessels operating in Australian waters will place all vessel operators on a 'level playing field'. It will provide a solid foundation for the Australian maritime industry to build upon into the future. The commercial arrangements for licencing for the costal trades will require further serious work but because of the current terms of the Shipping Registration Act global maritime operators will continue to resort to avoiding Australian regulations by registering their vessels in flag of convenience countries or zero tax locations such as Singapore and the Australian maritime industry will continue to decline – unless action is taken as suggested.

Appendix 1

The failure of the Coastal Trading (Revitalising Australian Shipping) Act 2012

The Coastal Trading (Revitalising Australian Shipping) Act 2012 has failed to revitalise Australian flag shipping. The number and total capacity of Australian flag shipping has further declined since 2012.

The number of General Licence ships has declined from 18 in 2012 to just 12 in 2017.

Not a single ship has transitioned from the Transitional General Licence category to the General Licence. Of the 15 Transitional General Licences granted in 2012 only three ships are still operating with Australian crews under their Transitional General Licences. The other 12 ships have transitioned off the Australian coastal trade – although some have returned under Temporary Licences with foreign crews. The Discussion Paper does not even mention what will happen to these ships and their crews when the Transition period ends later in 2017.

The Australian International Shipping Register [AISR] was established in the 2012 reform package but it does not contain a single ship. The AISR was intended to encourage foreign flag ships in Australian international trades to transfer to an Australian 'second register'. The first and only ship to apply to transfer to the AISR however was an Australian flag ship, the Pioneer, seeking to leave the Australian General Register. The application was vetoed by the MUA. The ship transferred to the Hong Kong flag and has subsequently used Temporary Licences to carry coastal cargoes of sugar from Mackay mainly to Sydney and Melbourne.

10,000 voyages have been carried out under Temporary Licences since July 2012. These Temporary Licences have been issued to foreign flag ships with foreign crews to carry Australian coastal cargoes. One example is the ship ICS Silver Lining operated by Inco Ships. It has completed at least 271 voyages under Temporary Licences since commencing Australian coastal operations in 2013. ICS Silver Lining is registered in Antigua & Barbuda (a flag of convenience) and reportedly crewed mainly by Filipino seafarers. ICS Silver Lining has carried approximately 1,075,660 tonnes of various dry bulk cargoes such as coke, coal, fertiliser, iron, lead and zinc between the industrial ports of Whyalla, Port Pirie, Bell Bay, Hobart, Port Kembla and Newcastle.

Another example is the CSL group's Bahamas flag Stadacona which has carried out 181 coastal voyages under Temporary Licences between July 2012 and April 2017. The flag of convenience ship Stadacona has carried 3,174,539 tonnes of Australian coastal cargo – mainly cement and clinker – during this time. The crew is reported to be primarily Ukrainian seafarers. This is clearly a permanent business model for the cement industry. These cargoes should be carried on an Australian flag ship. The Stadacona was previously called the CSL Yarra and before that was part of the ANL fleet and registered as the River Yarra.

Another CSL group ship, the Alcem Lugait, is the most prolific vessel taking advantage of the Temporary Licence provisions of the Coastal Trading Act 2012. The Alcem Lugait, with its mainly

Filipino crew, has carried out over 290 voyages under Temporary Licences since 2012. During this period it has reported carrying 3,385,567 tonnes of cargo between Australian ports. Its cargoes are cement and fly-ash and it generally operates on Australia's east coast – mostly out of Gladstone and delivering mainly to Sydney, Newcastle, Brisbane, Townsville and Melbourne. The Alcem Lugait is is registered in Singapore.

The five major petroleum companies operating in Australia have adopted a different approach to the use of Temporary Licences. Collectively they have carried 19,131,890 tonnes of crude and/or refined petroleum products on 1,298 voyages since 2012. However the five companies - Ampol Singapore Trading Pte Ltd, BP Australia Pty Ltd, Caltex Australia Petroleum Pty Ltd, Mobil Oil Australia Pty Ltd and Viva Energy Australia Ltd – have rotated a variety of tanker ships through the coastal trade. They have not just utilised a small number of tanker ships trading constantly on the coast. Ampol tankers have conducted 117 voyages, BP tankers 533 voyages, Caltex 140 voyages, Mobil 194 voyages and Viva 314 voyages. As recently as 2015 there were four tankers operated by Australian crews under Transitional General Licences which were fully engaged in carrying petroleum cargoes around the Australian coast. They have all now been withdrawn from operation and replaced by foreign flag tanker ships operated by foreign crews under Temporary Licences. In 2016 the five oil companies used Temporary Licence tanker ships to conduct 311 coastal voyages – a rate of six voyages per week throughout the year. This is clearly a business model based entirely on the exploitation of foreign ships with foreign crews carrying coastal cargoes – and absolutely zero Australian ships and zero Australian crews.

Each time that the Coastal Shipping Unit of the Department of Infrastructure issues a Temporary Licence they are authorising an exemption from payment of Australian company tax by the foreign shipping operators. It is no accident that the overwhelming majority of ships issued with Temporary Licences are registered under Flags of Convenience including Panama, Liberia, Marshall Islands, Bahamas and Antigua & Barbuda. A large number of recent Temporary Licence ships are now Singapore flag registered – because Singapore has outbid the Flag of Convenience countries with zero income tax on the earnings of maritime companies. It has been said that the whole international shipping industry is a tax avoidance industry.