



AIMPE
Supplementary
SUBMISSION to
HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON INFRASTRUCTURE,
TRANSPORT,
REGIONAL DEVELOPMENT
AND LOCAL GOVERNMENT
INQUIRY INTO
AUSTRALIAN COASTAL SHIPPING

1. Introduction

During the hearing in Sydney on 17th April 2008, Committee Members asked a number of questions which required further detail to be provided.

AIMPE has prepared a Supplementary Submission to deal with some of these areas requiring further detail.

These include an identification of the vessels that are licensed and some more detailed information about those vessels including their country of registration [flag].

AIMPE also seeks to place before the Committee further information on the issue of the declared vessels which were referred to in the initial submission.

The Committee sought extra detail about the Coastal Shipping task and the patterns of trade so AIMPE seeks to place more information regarding this matter on the public record.

Further the question of training has attracted much discussion and AIMPE seeks to put a more detailed position to the Committee on that subject.

During the initial hearing there was also interest from the Committee in the question of the interaction between cabotage policies and the concept of free trade. AIMPE responded verbally and now seeks to set out some information in writing for the Committee.

Finally, the CSL submission generated some detailed questions from Committee members and AIMPE seeks to place further information before the Committee on the history of CSL operations both in Australia and elsewhere around the world.

2. Licensed Vessels

The complete list of vessels licensed under the Navigation Act is attached at Appendix A. Overall there are 57 vessels that have been issued with a licence. However this somewhat misrepresents the identification of the Australian coastal shipping trading fleet as some of these vessels are quite small in size [and therefore cargo capacity].

If attention is focussed on the larger vessels of over 2,000 GRT, it can be seen that there are 45 vessels licensed to engage in the Coasting Trade. Of these 45 vessels, 18 are registered in a foreign country – and of these, 15 are registered under a Flag of Convenience.

The status of Flag of Convenience is one that has been established by the International Transport Workers Federation since the Second World War. In Appendix B is a short definition of the term Flag of Convenience followed by a list of the countries/flags declared to be Flag of Convenience countries/flags.

AIMPE additionally draws the attention of the Committee to the six vessels on the list in Appendix A which are operated with crews that are not Australians. AIMPE is not able to advise the Committee about the security status of the personnel on board these vessels. We simply are not able to say whether the personnel have been through the process of obtaining clearances under the Maritime Security Identification Card [MSIC] process.

Regarding three of the vessels – Sinotrans Shanghai, Theodor Storm and Nordwelle – AIMPE has already submitted that the personnel have been paid supplementary wages in accordance with the minimum rate of pay under the Maritime Industry Seagoing Award [MISA]. However these rates are only paid for the days spent sailing between Australian ports. Once off the Australian coast the seafarers drop down to a much lower rate of pay [with the exception of the Chief Engineer and the Master]. AIMPE understands that the seafarers onboard these vessels do not receive the benefit of the other conditions under the MISA. These include allowances, casual loading, leave [including paid annual leave] and parental leave. Further AIMPE understands that these seafarers are not in receipt of the Superannuation Guarantee Contribution from their employers.

AIMPE understands that similar circumstances pertain to the seafarers on board the ANL Warringa and the ANL Windarra however we do not have any direct evidence as we have not been on board to inspect records or talk with the personnel.

3. Declared Vessels

AIMPE takes the opportunity of this supplementary submission to place before the Committee the two lists of 'declared vessels'. These vessels are the ones that have sought a declaration from AMSA that the Navigation Act applies to their operations even if they are prima facie outside the scope of the Act. These are the opt-in provisions for offshore oil and gas vessels and for intra-state vessels respectively. These lists are found in Appendix C

The Section 8A Declared Vessels are those which operate in the offshore oil and gas sector and may be involved, at least for part of their working pattern, in intra-State operations.

The Section 8AA declared Vessels are trading vessels – vessels that would be seen as part of the sector known as coastal shipping but which likewise may spend some or all of their operations in intra-State trades. The classic example is to be found in the Queensland bauxite trade. There are several ships which carry bauxite from Weipa to Gladstone for refining before export or smelting. These include the River Boyne, River Embley, Fitzroy River and Endeavour River. At 50,000 GRT these are substantial dry bulk vessels which transit the environmentally sensitive Great Barrier Reef Marine Park. However they trade between two ports in the one State – Queensland. As such they are engaged in an intra-State trade and are except for the opt-in provisions outside the constitutional scope of the Navigation Act.

AIMPE repeats that this is just one example of why the Navigation Act 1912 should be amended to ensure that Australia has single national maritime jurisdiction covering all commercial vessels. The appropriate regulator is clearly the Australian Maritime Safety Authority but it only has jurisdiction because the operator made an application for a Declaration under s8AA.

There is a significant degree of overlap between the lists of licensed and declared vessels. This is because the operators see it as necessary to cover all the bases when it comes to the different types of trading patterns – intra-State, inter-State and international. Interestingly the declarations stay in force indefinitely where as the licences are limited in duration to 12 months. Thus it is more likely that out of date information will appear on the list of declared vessels than on the list of licensed vessels.

4. Permit Ships and Trade Statistics

In the initial submission by AIMPE, the Committee was advised that Permit Ships [ships using either single voyage permits, SVPs, or continuing voyage permits, CVPs] now carry over 30% of Australia's coastal shipping cargoes. This information is derived from the BTRE publication Australian Sea Freight Statistics 2003 -2004 published in 2006.

A copy of three particularly relevant pages appear as Appendix D to this supplementary submission.

Also of importance, and more up to date, is the BTRE publication Waterline. In editions 41 and 42 more statistics on the number of permits and the cargoes to be carried under those permits was published.

Copies of extracts from these publications are also provided at Appendix E.

The various publications from the BTRE are based on access to the department's files on permits which are not published. The raw data is not available for researchers to conduct their own investigations. The last time the full data became available was when it was released in response to a Question on Notice in the Federal Parliament.

Waterline 41 shows that in the early 1990s permits were carrying less than 2 million tonnes of coastal cargo out of a total task of around 44 million tonnes. That is, the quantity represented around 5% of the total domestic freight task carried out by coastal shipping.

Waterline 41 also shows a sustained rise in the amount of coastal cargo carried by permit ships from 1997 onwards. By 2004-05 the volume had exceeded 15 million tonnes out of a total domestic freight task of coastal shipping of around 52 million tonnes. Thus the percentage had reached around 30% of the total amount of domestic freight being carried by shipping.

The Australian Sea Freight Statistics for 2003-04 provides statistics that are slightly older but more detailed than in the Waterline's publications referred to above. According to the Australian Sea Freight Statistics the total amount of tonnes of cargo carried under permits in 1999 – 2000 was 3,715,264. By the following year this had jumped to 6,996,609 tonnes and further increased to 10,338,032 tonnes in 2001-02. By 2003-04 the quantity was 12,185,318 tonnes.

In the 2003-04 year 62 permits were issued for the carriage of 3,672,797 tonnes of **iron ore**. The BTRE figures state that this amounted to 56.5% of the coastal iron ore cargoes loaded in 2003-04. On a tonne kilometre basis this was calculated by BTRE to be 53.1% of the total coastal iron ore cargo for 2003-04. That same year 32 permits were issued for the carriage of **crude oil** and 1,739,199 tonnes of crude oil were carried around the Australian coast by permit vessels. BTRE calculated that this represented 21.5% of the total tonnes of coastal cargoes of crude oil carried for the year. On a tonne kilometre

basis it was a similar figure of 21.3% of the domestic freight task for crude oil. A further 64 permits were issued for the carriage of **petroleum products** during 2003-04. This amounted to 1,445,881 tonnes of petroleum products which BTRE calculated was equivalent to 22.6% of the petroleum products loaded for carriage around the coast however BTRE also calculated that this represented 37% of the tonnes kilometre domestic freight of petroleum products by ships in 2003-04. In the **Other** cargo category, a total of 863 permits were issued in 2003-04 which amounted to a total of 4,929,810 tonnes. On the basis of tonnes loaded the BTRE calculated this was 24.6% of the other domestic freight cargo to be moved but on a tonnes kilometre basis this was 43.4% of the other cargo carried in 2003-04.

5. Training

5.1. Skills Shortage

That there are insufficient qualified marine engineers for the available marine engineer positions can be concluded from the following:-

- For the last 3 to 4 years, increasingly unable to source enough engineers, vessels in the 'Bluewater' merchant fleet and the Offshore Oil & Gas sector frequently cannot attract enough marine engineers and consequently operate with less than the normal operational manning of marine engineers; this has adverse consequences for maintenance, fatigue and safety.
- The real scope of the shortage is partially disguised as employers respond by increasingly asking their marine engineer employees to extend their duty-swing by several weeks and/or after a short period at home ask them to work whilst they are supposed to be home with their families.

However the pressure of this over-utilisation of engineers ultimately contributes to an acceleration in the rate of employees leaving the merchant fleet because:

- The build up of leave accruals must at some point be taken.... But no relief engineer is then available and the ship will be unable to sail; this has happened on several occasions in the last 18 months.
- The inability to take owed leave periods at home leads to personal-life / family-life pressures to resign and/or change career, either to employment nearer home or to a sector of the industry with better capacity to guarantee leave periods at home.
- employers introducing new vessels in any sector find it extremely difficult to employ already-trained seafarers: the response of the employer depends on their capacity to pay and is typically as follows:-
 - **The 'freeloader' companies [Towage, FPSO¹ and most of the Offshore Oil & Gas companies] do not pay/sponsor new-entrant trainees. However they have the capacity-to-pay so highly that they repeatedly/continuously out-bid the 'Bluewater' merchant fleet sector for the employees that the merchant fleet trained.**
 - In some cases even that capacity-to-pay has failed them, and 'freeloader' employers and unions have had to enter into unique arrangements involving S.457 Visa holders for a large number of positions.

¹ Floating Production Storage and Offtake facility; usually a converted oil-tanker ship with water-separation and filtration of crude oil and onboard storage until 'offtake' to a passing oil-tanker ship.

- The 'Bluewater' merchant fleet cannot compete on salaries, so in order to rebuild operational capacity they must spend more money to train new-entrant marine engineers.
- As a consequence, the 'Bluewater' merchant fleet is increasingly left with only the very-senior, or the very-junior engineers; they have lost much of their 'middle-order' of experienced engineers who would become their Chief Engineers in the future.

Currently, this skills-shortage can only be expected to become worse because:

- × **Each year we have LESS qualified engineers because new-entrant training continues to be far less than annual attrition** [estimated; no industry structures left to gather data].
- × **Industry-wide if we do not ENSURE classes of new-entrant Trainees/Cadets can be funded/filled then the remaining 3 colleges will also withdraw from maritime training.**

Example 1: Hunter TAFE [Newcastle], Challenger TAFE [Fremantle], and AMC [Launceston] have for many years been struggling to run one new-entrant training course per year and may lose the services of skilled lecturers in the face of failing classes. Challenger TAFE has in 2008 alerted AIMPE to a crisis in which courses currently half-completed will be cancelled unless replacement lecturers can be found. **If not then Challenger TAFE may, like Melbourne's RMIT and Sydney TAFE several years ago, be forced to withdraw from marine engineer training altogether.**

Example 2: Hunter TAFE new-entrant-Engineer enrolments in the last 6 years were:

Hunter TAFE new entrant Engineer enrolments 2002-2007 [from submission #33, Appendix A]	
2002	43
2003	16
2004	19
2005	0
2006	0
2007	0

- × **Each year we have MORE new employment opportunities.**
- × **275 of the 1607 Engineer Class 1, 2 & Watchkeeper holders [17%] are aged 60 years or more** and can be reasonably anticipated to move into retirement in the next couple of years. [Appendix D of AIMPE submission #35].

- ✘ **There is no commercial imperative for the ‘freeloader’ companies to pay for new-entrant training whilst they can out-bid the ‘Bluewater’ merchant fleet for the people it trained.**

5.2. Why the Skills Shortage? What has changed?

5.2(a). demand for marine engineers

Over the last 20 years the Australian maritime industry experienced changes that produced very significant increases in employment of maritime skills:

- The ‘Bluewater’ merchant fleet is half the size it was 20 years ago.
- The Towage task has grown; more Ports with more tugs require more seafarers than before. Svitzer towage is the single biggest employer of marine engineers in Australia, on it’s own employing approximately 250 marine engineers.
- The Offshore Oil & Gas sector is now double or triple the size it was 20 years ago; in 2008 it employs more marine engineers than does the merchant fleet.
 The offshore sector had previously been one in which there would be a surge in employment [lagging an oil-company surge in investment in exploration] on seismic-survey vessels, drilling vessels, pipe-laying vessels and support vessels for construction of oil-production platforms. When those specific projects were completed most of the skilled labour was then shed back to other sectors of the maritime industry, leaving only a base-load of employees on offshore supply / support vessels servicing the needs of oil-production platforms. However, the rising price of oil led to an end to these ‘boom-and-bust’ cycles with investment in oil exploration and drilling having become continuous and producing gradual growth each year in total employment.
- The FPSO & FSO sector began in Australia in 1984 with a trial of the experimental FPSO ‘Acqua Blu’ and in 1985 FPSO ‘Jabiru Venture’ commenced permanent operations and is still in service. The attraction of an FSO² is that it has the capacity to store onboard the oil produced thus not requiring construction of an oil pipeline to shore. An FPSO is even more attractive in that it can produce crude oil in deep water without need to build fixed platforms. As a result today Australia has 3 FSOs and 12 FPSOs in service. Market forces have caused FPSO employers to increase the leave offered to employees such that 2.5 persons are required per berth; as a result more employees must now be found to operate them even if there was no further increase in the number of these vessels. On top of that increase in employment there are 4 additional FPSOs already the subject of enterprise agreement negotiations and expected to commence in the next 18

² A Floating Storage and Offtake facility is a ship moored near an oil-production platform which receives the processed oil for onboard storage until ‘offtake’ to a passing oil-tanker ship.

months or so..... more are to come.

5.2(b). supply of new-entrant marine engineers

The capacity of the 'Bluewater' merchant fleet to *fund* the training of new-entrants has halved, commensurate with the reduction in the fleet from about 90 ships [of 2000 GRT and over] in 1985 to just over 40 ships in 2008; our primary submission [#35] details the structural inequality that has advantaged foreign shipping above Australian shipping and seafarers to produce this result.

Further, 12 years ago the last vestiges of industry-based support for new-entrant training were eliminated:

- the Howard Government ended the "Cadet Grant Levy Scheme" [a compulsory training levy on the major users of trained seafarers to pay for the training of new-entrant seafarers].
- Without which industry participation in the National Maritime Training Committee ["NMITC"] with it's comprehensive man-power assessment & planning and co-ordination of employer sponsored new entrants to maintain college-class viability, ceased.
- in first few years subsequently there was almost no sponsored training [Farstad and ASP Ship Management being the notable exceptions]
- AIMPE tried to deal with this lack of industry-wide training by encouraging commitment to sponsorship of new-entrants via our enterprise bargaining agreements.

In 1998 AIMPE and ASP Ship Management inserted in our merchant fleet industrial agreement clauses agreeing the company would sponsor the new-entrant training of at least 1 Trainee Engineer or 1 Cadet Engineer per 2 ships. Most other companies in the merchant fleet followed suit in 2001.

In 2002 AIMPE commenced inserting similar clauses in our offshore sector industrial agreements, however most oil & gas sector projects are of less than 18 months duration and we understand that the hotly contested tendering processes with the oil-company client leads to thin profit margins with little scope for funding of new-entrant training. Attempts by offshore employers to negotiate with the client oil-company to add to the contract price additional funding specifically for new-entrant training may lead to the loss of the contract to a lower bidder who plans to train no-one.

- It was widely recognized that these minimum numbers [above] were of themselves probably less than industry attrition rates, but there was/is no process for collecting such manpower planning data and hence no certainty.

However due to normal attrition the consequence was a substantial real reduction in the number of qualified marine engineers in Australia.

Despite an abundance of persons interested in a career as a marine engineer, with little/no sponsorship of Cadet Engineers or Trainee Engineers the 5 colleges found it impossible to fill scheduled classes and Sydney TAFE and RMIT Melbourne withdrew permanently from marine engineer training. Class numbers in new-entrant marine engineer courses at Hunter TAFE [Newcastle], Challenger TAFE [Fremantle], and AMC [Launceston] are approaching unviability.

An oil company prepared to write contracts in which it pays it's contractor [an offshore employer] for ever-escalating salaries & bonuses for seafarers is still not easily inclined to consider responsibility for maritime training to be a part of their core business. Yet if the oil company doesn't agree to fund it then the offshore employers cant afford to sponsor. If we wait for such companies to identify their own 'business need' to pay for substantial new-entrant training this will most likely not occur until there are no more seafarers [trained at someone else's expense] to poach from the merchant fleet. Long before that point is reached, if nothing is done, vessels of the merchant fleet will grind to a halt as they will have insufficient trained seafarers left to operate.

5.3. retention, market forces & capacity to pay for training

'Bluewater' merchant shipping is unable to retain the marine engineers, and other seafarers, they pay to train; they are being stripped of trained seafarers by the 'free-loader' companies who themselves train few, or no, new-entrants at all.

The 'free-loader' companies have always had the capacity-to-pay much higher salaries/leave etc than the merchant fleet can sustain.

They have always been able to attract marine engineers, and other seafarers, who had been trained at the expense of a merchant fleet of 80 to 100 ships.

But whilst the freeloaders have grown enormously in their stripping of these trained seafarers, the merchant fleet is now too small to *fund* to train at a rate 300% of it's own needs so as to generate a 'surplus' sufficient that after the freeloaders have all they need the merchant fleet might still be left with enough employees to operate.

The free-loader companies are now bidding ever-higher salaries for a pool of qualified seafarers too small for the number of available jobs. The bidding and counter-bidding demonstrates that the free-loader companies have the capacity to pay for training. Unfortunately they see no commercial business need to train whilst ready-trained seafarers from the merchant fleet keep answering the job-adverts. Some examples of those market bidding-wars are as follows:-

	SALARY typically paid to entry-level marine engineer officer or deck officer	Extra Retention Bonuses now paid
FPSOs	from \$120,000 to as high as \$165,000 p.a. on Woodside's FPSOs	October 2007 Woodside offered all their FPSO employees 10% bonus to STAY another year. April 2008 BHPBP followed in respect of FPSO 'Griffin Venture' in with their own 10% bonus, with another 5% available if safety / production targets were met. FPSO 'Crystal Ocean' offers a retention bonus of 5% after 1 year, another 5% after the second year, and another 30% after the third year.
Offshore supply boat	\$115,000 p.a	
Merchant Fleet	\$95,000 p.a	

Unsurprisingly, the merchant fleet can not retain employees against such blandishments to leave.

Some in the merchant fleet have recently argued that they might get greater employee retention if only the length of time for training, training-standards and training cost were reduced?

This is a flawed argument as only money/conditions, or a job giving more leave-periods at home, will influences employees to stay-with or leave the merchant fleet, and it is clear that the merchant fleet can not afford to out-bid the cashed-up 'freeloader' companies.

Therefore the real issue is that **the 'freeloader' companies have the capacity-to-pay to train their own marine engineers, and other seafarers, but will not.**

5.4. Proposed Solution

There can be no solution that does not ensure that the 'freeloader' companies are required to pay to train their own marine engineers and other seafarers. It is evident there is no current commercial imperative to do so until the merchant fleet is stripped of all qualified employees.

That suggests a legislative solution, developed in consultation with unions and industry, which would for example:

- i. require every employer of a marine engineering certificate of competency to pay a per-person levy to be accumulated in a central fund to pay for the training of new entrant Marine Engineers.
- ii. the companies who employ only a few Marine Engineers only pay in proportion
- iii. but the companies who strip the most Engineers out of the existing industry would then pay for a commensurate number of new entrant Marine Engineers
- iv. the Levy from the Bluewater, Dredging, Towage, FPSO and Offshore Oil & Gas sectors could pay to sponsor Cadet Engineers or Trainee Engineers in the merchant fleet sector using the accumulated Levy funds.
- v. The Levy [perhaps at a higher rate?] should also apply to each engineering position filled by someone on a S.457 Visa.
- vi. accumulated Levy funds held in trust in a transparent fashion, to be allocated as determine by a National Maritime Industry Training Committee.

We should not sit idly by and watch the de-skilling of Australia's youth; companies that do train [like ASPSM, Farstad and Teekay] are flooded with qualified applicants when there is a preparedness to pay for their training and something along these lines would address the countries social/educational aspirations whilst contributing to an improvement in the nation's deficit in trade-in-services.

Marine Engineers in Australia are currently trained to World's Best Standard and are eminently employable anywhere in the world. If the above solution was matched with a variation in the Taxation Act to allow Australian seafarers engaged in international-shipping the same tax-concessions as enjoyed by other OECD nations then we would have the makings of a new cash-positive export-in-maritime-services that could in time make the same contributions to our domestic economy as occurs in the U.K. or Norway.

The last thing you would do would be to destroy the potential for these things by proposing any reduction in Engineer Entry Standards or safety Training/Certification.

5.5. Why it Costs to Train; background on Qualifications & STCW95

Why does new entrant marine engineer training only occur if paid/sponsored by a maritime employer?

The short answer is because

- i. the training necessarily involves sea-service by a Cadet Engineer [HSC passes in English, Mathematics & Science required] or Trainee Engineer [qualified engineering Tradesperson] on a company's ships initially being trained by shipboard engineers but as they learn they increasingly perform work:
 - o for which they must have an employer willing to accept liability for the consequences of any error they make; and

- for which they must have workers compensation in case they are injured; and
- for which they must be paid proportionate to the value of their work.
- In the case of a Trainee Engineer [i.e. already a qualified engineering Tradesperson often with a family and a mortgage to support] the value of this work is substantial yet the rates paid are probably half the typical market rate for such skills ashore.

However other related considerations are:

- ii. The Cadet Engineer course was originally designed to be at Degree level with a major employer [with Training Officers on staff] taking responsibility for integrating all the disparate elements in a meaningful comprehensive cadetship; it properly requires sponsorship by a competent employer committed to providing this.
- iii. As no company can afford to employ extra Engineers expressly as Trainers it necessary that a large proportion of this training/work can not be constantly supervised and therefore cannot be characterized as merely 'training'.
- iv. In the case of Trainee Engineers it is necessary to pay at a rate that will attract experienced tradespersons from industry ashore.
- v. The industry is agreed that a mix of sponsored Trainee Engineers and Cadet Engineers must continue else the school-leaver Cadets will in time have no Trade-trained Engineers to support the Cadet's acquisition of manual maintenance skills.
- vi. The standard of all maritime training must be no less than the *minimum* set down in the STCW95³ Convention & Code, to which Australia is a signatory.
- vii. Australia's maritime safety/certification standards have always been higher than this minima and it is in no one's interests to lower them.
- viii. State-issued certificates commence at the entry-level of Marine Engine Driver 3 and allow progression [via sea-service on *small* vessels, college courses and Safety-Authority test] to Marine Engine Driver 2, Marine Engine Driver 1, and peak at Marine Engineer Class 3.
- ix. AMSA-issued certificates commence at the entry-level of Marine Engine Watchkeeper and allow progression [via sea-service on *large* vessels, college courses and AMSA test] to Marine Engineer Class 2 and peak at Marine Engineer Class 1.

³ STCW95 is the United Nations[IMO] convention on Standards of Training Certification & Watchkeeping 1978 as amended in 1995 & the related Code.

There are four ways for a person to work as a marine engineer in Australia:

- Small vessel State-issued certificates as per viii above, with no prerequisites.
- STCW95-standard AMSA-issued certificates as per ix above, with prerequisites of HSC capability. Note also that AMSA and AIMPE have agreed that work needs to be done to better redefine the Engineer Cadetship.
- STCW95-standard AMSA-issued certificates as per ix above, with possession of a suitable engineering Trade. Note also that AMSA and AIMPE are developing a methodology to assess the suitability of a Trade and expand the assessment to post-Trade engineering work where substantiated.
- STCW95-standard Certificate issued in another nation; subject to a verbal safety-test by AMSA an Australian Certificate of Recognition is issued which will permit the use of the foreign Certificate in Australia.

6. Free Trade Agreement and Cabotage

During the initial hearing of the Committee in Sydney on 17th April, AIMPE was asked about the interaction of cabotage with the principles of the Free Trade. AIMPE advised the Committee that both countries had effectively reserved their positions on the question of cabotage. This was achieved by setting out specific areas in annexures which identify the broad area of policy and the existing legislative measures relevant to the policy.

Annex II to the 2004 Free Trade Agreement between Australia and the United States of America contains the relevant words. On page 12 regarding the maritime sector and the question of investment, the Annex records:

“Australia reserves the right to adopt or maintain any measure with respect to the registration of vessels in Australia”

Then at page 13 of the Annex regarding maritime transport and cross-border trade in services and investment, the Annex records:

“Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services.”

The equivalent provisions in the Annex which relate to the position adopted by the United States are far more extensive:

“The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

(a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;

- (b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;
- (c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;
- (d) requirements related to documenting a vessel under the U.S. flag;
- (e) promotional programs, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements;
- (f) certification, licensing, and citizenship requirements for crew members on U.S.-flagged vessels;
- (g) manning requirements for U.S.-flagged vessels;
- (h) all matters under the jurisdiction of the Federal Maritime Commission;
- (i) negotiation and implementation of bilateral and other international maritime agreements and understandings;
- (j) limitations on longshore work performed by crew members;
- (k) tonnage duties and light money assessments for entering U.S. waters; and
- (l) certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation. However, the treatment in (b) is conditional upon obtaining comparable market access in these sectors from Australia:

- (a) vessel construction and repair; and
- (b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies.”

While it may be that the Australian approach is in effect just as powerful in preserving this county’s ability to legislate about cabotage and related matters, the detail in the USA’s section of the Annex shows that the Congress and the Presidents of the USA have placed a very high priority on the US Merchant Marine. This policy has been established and reinforced in many statutes over a long period of time. In fact the antecedents of the policy can be traced back to the needs of the young nation immediately after the War of Independence.

Merchant Marine Act of 1920, §§ 19 and 27, 46 App. U.S.C. § 876 and § 883 et seq.
Jones Act Waiver Statute, 64 Stat 1120, 46 U.S.C. App., note preceding Section 1
Shipping Act of 1916, 46 U.S.C. App. §§ 802 and 808
Merchant Marine Act of 1936, 46 U.S.C. App. §§ 1151 et seq., 1160-61, 1171 et seq., 1241(b), 1241-1, 1244, and 1271 et seq.
Merchant Ship Sales Act of 1946, 50 U.S.C. App. § 1738 46 App. U.S.C. §§ 121, 292, and 316 46 U.S.C. §§ 12101 et seq. and 31301 et seq. 46 U.S.C. §§ 8904 and 31328(2)
Passenger Vessel Act, 46 App. U.S.C. § 289
 42 U.S.C. §§ 9601 et seq.; 33 U.S.C. §§ 2701 et seq.; 33 U.S.C. §§ 1251 et seq.
 46 U.S.C. §§ 3301 et seq., 3701 et seq., 8103, and 12107(b)

Shipping Act of 1984, 46 App. U.S.C. §§ 1708 and 1712
The Foreign Shipping Practices Act of 1988, 46 App. U.S.C. § 1710a
Merchant Marine Act, 1920, 46 App. U.S.C. §§ 861 et seq.
Shipping Act of 1984, 46 App. U.S.C. §§ 1701 et seq.
Alaska North Slope, 104 Pub. L. 58; 109 Stat. 557
 Longshore restrictions and reciprocity, 8 U.S.C. §§ 1101 et seq.
 Vessel escort provisions, Section 1119 of Pub. L. 106-554, as amended
Nicholson Act, 46 App. U.S.C. § 251
Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, 46 U.S.C. § 2101
 and 46 U.S.C. § 12108 43 U.S.C. § 1841 22 U.S.C. § 1980
Intercoastal Shipping Act, 46 U.S.C. App. § 843
 46 U.S.C. § 9302, 46 U.S.C. § 8502; Agreement Governing the Operation of Pilotage
 on the Great Lakes, Exchange of Notes at Ottawa, August 23, 1978, and March 29,
 1979, TIAS 9445
Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.
 19 U.S.C. § 1466
North Pacific Anadromous Stocks Convention Act of 1972, P.L. 102-587; *Oceans Act
 of 1992, Title VII*
Tuna Convention Act, 16 U.S.C. §§ 951 et seq.
South Pacific Tuna Act of 1988, 16 U.S.C. §§ 973 et seq.
Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773 et seq.
Atlantic Tunas Convention Act, 16 U.S.C. §§ 971 et seq.
Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. §§ 2431 et
 seq.
Pacific Salmon Treaty Act of 1985, 16 U.S.C. §§ 3631 et seq.
American Fisheries Act, 46 U.S.C. § 12102(c) and 46 U.S.C. § 31322(a)

7. Canadian Steamship Line

It comes as no surprise that CSL has submitted to this Coastal Shipping Inquiry that the company wants the single and continuous voyage permit system to remain unaltered. These are granted under section 286 of the Navigation Act 1912 and further, under *carte blanche* guidelines issued by former Transport Minister John Anderson.

The key to understanding the abuse that was ushered in by the then Howard Government is the past actions and lobbying of that Government by CSL-a company that proposed to remove Australian seafarers and thereby the maritime unions-an attractive outcome for the ideologically disposed anti-union former Coalition Government.

In 1999 after purchasing two former ANL vessels from the Federal Government, CSL observed first hand what effect that changes to the permit system were inflicting upon Australian-flagged shipping in the coastal trade. Foreign shipping with its much lower unit labour cost and concessional taxation-or tax-free status-was successfully bidding to move coastal cargoes and then successfully applying for voyage permits.

This unfair competition was adversely impacting on the business case of CSL. Indeed the company appealed to the Government that offshore companies were benefiting at the expense of locally based ship operators.

The Howard Government having offloaded Australian National Line no longer had a pecuniary interest in any cabotage based coastal shipping in Australia and it simply went all out and granted liberty of access to foreign shipping. This led Minister Anderson to make the much quoted declaration that “We are a nation of shippers not ship owners.”

A staggering and ludicrous proposition for an island sovereign nation.

Nevertheless CSL got the message.

CSL is a hybrid shipping company. It operates in Canada as a national flag operator flying the Maple Leaf on its Great Lakes-based ships.

Indeed via its peak body in that country, the Canadian Shipowners Association, it jealously guards against incursions by foreign flag shipping in the Canadian Coastal trade.

In Canada the coastal trade is overseen by the Canadian Transport Agency and access for foreign shipping is limited to strictly when no Canadian ship is available as can be seen from the following extract from the web site of the CTA:

Q3. What is a coasting trade licence?

*A3. It is a licence issued by the Minister of National Revenue to a Canadian resident who has applied for permission to bring a foreign flagged vessel into Canadian waters to perform a service or activity within Canadian waters over a specified period of time. A coasting trade licence is issued when there are no suitable Canadian vessels available to perform the service or activity. {
http://www.cta-otc.gc.ca/marine/common/faq_e.html#3}*

In contrast to former Minister Anderson’s voyage permit guidelines here in Australia, in Canada, freight rates on offer between the respective Canadian ship on the one part, as opposed to foreign flag freight rates on the other part, are not considered relevant for the granting of the licence to the foreign ship.

Again in contrast to Australia, cargo parcel size is not considered relevant. That is, in past decisions of the CTA, it has refused to grant a licence to a foreign operator even though that meant additional voyages as the Canadian ship in question was of a smaller deadweight and therefore would have to complete the shipment of the cement cargoes with several return voyages.

Internationally CSL is a flag of convenience operator. FoC status is determined by no link between the flag state and the beneficial owner of the ship or ships.

Typically CSL has Bahamian flagged ships. The owner of former ANL ships is CSL Pacific Shipping Inc. This company is registered in tax haven Barbados. In turn it is beneficially owned by the CSL group and ultimately, three Canadian citizens.

In concert with the Howard Government in 2002/03 CSL transferred ownership of the former ANL tonnage to its Barbados subsidiary and replaced the Australian flag with the Bahamas flag and proceeded to operate under the compromised voyage permit system.

In 2003 it petitioned the High Court of Australia to declare that its Ukrainian seafarers employed on the former ANL vessels operating in Australia and engaged on contracts with offshore companies could not be regulated by industrial awards of the Australian Industrial Relations Commission.

In August the same year the High Court determined by seven Judges to nil that the AIRC did have jurisdiction to impose awards on the offshore companies if the Industrial Commission on merit so determined.

CSL then lobbied the Howard Government to enact a provision that would preclude the Commission issuing such award regulation on its foreign flagged and foreign owned operations in Australia.

In March 2006 the Howard Government enacted the so-called WorkChoices legislation. In this was Regulation 1.1 which expressly excludes operators under the vessel permit system from the industrial laws binding on all Australian-based employers including Australian shipping companies in competition with CSL.

In the sense of what it paid its Ukrainian seafarers on the former ANL tonnage, CSL was free to do as it pleased.

Appendix A

Licence Vessels 2008 (Correct as at 29/03/2008 1:27:38 AM)

Operator Name	Licence No	Vessel	IMO Number	GRT	Vessel Type	Flag
North Star Cruises Australia	3201	TRUE NORTH	9308651	742	Ro Ro Passenger Ship	Australia
Teekay Shipping (Australia) Pty Ltd	3216	IRON MONARCH	7305502	10,577.00	Ro Ro Cargo Ship	Australia
Teekay Shipping (Australia) Pty Ltd	3218	PALMERSTON	8814639	26,162.00	Oil Tanker	Australia
Teekay Shipping (Australia) Pty Ltd	3219	SEAKAP	8014344	5,323.00	Chemical Tankship	Australia
Teekay Shipping (Australia) Pty Ltd	3221	BASKER SPIRIT	9002386	56,020.00	Oil Tanker	Bahamas
Teekay Shipping (Australia) Pty Ltd	3222	SAMAR SPIRIT	9017109	57,448.00	Oil Tanker	Bahamas
Teekay Shipping (Australia) Pty Ltd	3223	PIONEER	9111436	17,094.00	Bulk Carrier	Australia
Teekay Shipping (Australia) Pty Ltd	3224	BARRINGTON	8716356	21,718.00	Oil Tanker	Australia
P & O Maritime Services	3243	SOUTHERN SUPPORTER	8518364	2,065.00	Supply Ship	Australia
P & O	3244	AURORA	8717283	6,574.00	Special	Australia

Maritime Services		AUSTRALIS			Purpose Ship	
Inco Ships	3248	ACCOLADE II	8012425	6,419.00	General Dry Cargo	Australia
Inco Ships	3250	ANL BASS TRADER	9132399	7,260.00	Container Ship	Australia
ANL Container Line Pty Ltd	3258	ANL WARRINGA*	9324837	39,900.00	Container Ship	Marshall Is
ANL Container Line Pty Ltd	3259	ANL WINDARRA*	9324849	39,906.00	Container Ship	Marshall Is
CSL Australia Pty Ltd	3267	IRON CHIEFTAIN	9047740	34,422.00	Bulk Carrier	Australia
CSL Australia Pty Ltd	3268	CSL PACIFIC*	7420716	21,047.00	Bulk Carrier	Bahamas
BHPB Freight Pty Ltd	3270	IRON YANDI	9122904	82,306.00	Bulk Carrier	Australia
BHPB Freight Pty Ltd	3271	PACIFIC TRIANGLE	9189158	100,330.00	Bulk Carrier	Liberia
BHPB Freight Pty Ltd	3272	LOWLANDS PROSPERITY	9225005	86,201.00	Bulk Carrier	Belgium
Toll Shipping	3273	TASMANIAN ACHIEVER	9180190	20,342.00	Ro Ro Cargo Ship	Australia
Toll Shipping	3274	VICTORIAN RELIANCE	9180205	20,342.00	Ro Ro Cargo Ship	Australia
ASP Ship Management	3275	RIVER BOYNE	8018132	51,035.00	Bulk Carrier	Australia
SEACORP COASTAL SHIPPING	3276	Kimberley Rose	9210311	6,204.00	Container Ship	Antigua & Barbuda
MISC	3277	Sinotrans Shanghai*	9304693	27,437.00	Container Ship	Liberia

MISC	3278	THEODOR STORM*	9248679	28,270.00	Container Ship	Cyprus
MISC	3279	Nordwelle*	9294537	26,611.00	Container Ship	Cyprus
CSL Australia Pty Ltd	3281	GOLIATH	9036430	11,754.00	General Dry Cargo	Australia
CSL Australia Pty Ltd	3282	ALCEM CALACA	7805382	8,839.00	Bulk Carrier	Panama
SeaRoad Shipping	3283	SEAROAD TAMAR	8917429	13,965.00	Container Ship	Australia
SeaRoad Shipping	3284	SEAROAD MERSEY	8914831	7,928.00	Ro Ro Cargo Ship	Australia
ASP Ship Management	3285	ALLTRANS	8125569	27,662.00	Bulk Carrier	Australia
ASP Ship Management	3286	RIVER EMBLEY	8018144	51,035.00	Bulk Carrier	Australia
ASP Ship Management	3287	FITZROY RIVER	8019019	50,144.00	Bulk Carrier	Australia
ASP Ship Management	3288	ENDEAVOUR RIVER	8019007	50,144.00	Bulk Carrier	Australia
Barwil (VIC)	3289	HELIX	9134713	28,810.00	Oil Tanker	Australia
BP Australia	3291	JASMINE	9252072	27,335.00	Oil Tanker	Marshall Is
BP Australia	3292	BRITISH FIDELITY	9285744	29,350.00	Oil Tanker	Isle of Man
Coral Princess Cruises (NQ) Pty Ltd	3293	CORAL PRINCESS	8804696	730	Ro Ro Passenger Ship	Australia
Coral Princess Cruises (NQ) Pty Ltd	3294	OCEANIC DISCOVERER	9292747	1,779.00	Ro Ro Passenger Ship	Australia
CSL Australia Pty Ltd	3297	CEMENTCO	7623112	12,077.00	Bulk Carrier	Barbados

ASP Ship Management	3298	KOWULKA [now "Vitafaith" 10 09 07]	8311091	17,796.00	Bulk Carrier	Malta
ASP Ship Management	3299	VIGSNES	7812220	14,785.00	Bulk Carrier	Australia
ASP Ship Management	3300	LINDESAY CLARK	8407424	18,692.00	Bulk Carrier	Australia
ASP Ship Management	3301	PORTLAND	8509117	23,262.00	Bulk Carrier	Australia
TT Line (Spirit of Tasmania)	3302	SPIRIT OF TASMANIA I	9158446	29,338.00	Ro Ro Passenger Ship	Australia
TT Line (Spirit of Tasmania)	3303	SPIRIT OF TASMANIA II	9158434	29,338.00	Ro Ro Passenger Ship	Australia
BP Australia	3304	British Loyalty	9285720	29,335.00	Oil Tanker	Isle of Man
Perkins Shipping Pty Ltd	3305	WARRENDER	9114218	946	Ro Ro Cargo Ship	Australia
Perkins Shipping Pty Ltd	3306	FRANCES BAY	8010594	1,627.00	Ro Ro Cargo Ship	Australia
Perkins Shipping Pty Ltd	3307	FOURCROY	9190597	486	High Speed Cargo Craft	Australia
Perkins Shipping Pty Ltd	3308	BIQUELE BAY	9139751	1,064.00	Bulk Carrier	Singapore
Perkins Shipping Pty Ltd	3309	CORAL BAY	8874562	355	High Speed Cargo Craft	Australia
Perkins Shipping Pty Ltd	3310	CALEDON BAY	8409238	197	High Speed Cargo Craft	Australia
Perkins	3311	Halifax Bay	9184689	1,226.00	General	Australia

Shipping Pty Ltd					Dry Cargo	
Southern Shipping	3312	SOUTHERN CONDOR II	857011	247	Ro Ro Passenger Ship	unknown
Southern Shipping	3313	MATTHEW FLINDERS III	8957364	247	Ro Ro Passenger Ship	Australia
Jebsens	3315	Spirit of Esperance	9031466	14,858.00	Container Ship	Malta

Table from the website of Department of Infrastructure, Transport, Regional Development and Local Government except for flag information which is based on the Equasis website.

*indicates ships operated by foreign crews under foreign conditions of employment

Appendix B

What are Flags of Convenience?

A flag of convenience ship is one that flies the flag of a country other than the country of ownership.

Cheap registration fees, low or no taxes and freedom to employ cheap labour are the motivating factors behind a shipowner's decision to 'flag out'.

The ITF takes into account the degree to which foreign owned vessels are registered and fly the country flag, as well as the following additional criteria, when declaring a register an FOC:

- The ability and willingness of the flag state to enforce international minimum social standards on its vessels, including respect for basic human and trade union rights, freedom of association and the right to collective bargaining with bona fide trade unions.
- The social record as determined by the degree of ratification and enforcement of ILO Conventions and Recommendations.
- The safety and environmental record as revealed by the ratification and enforcement of IMO Conventions and revealed by port state control inspections, deficiencies and detentions.

The ITF believes there should be a '**genuine link**' between the real owner of a vessel and the flag the vessel flies, in accordance with the United Nations Convention on the Law of the Sea (UNCLOS). There is no "genuine link" in the case of FOC registries.

Some of these registers have poor safety and training standards, and place no restriction on the nationality of the crew. Sometimes, because of language differences, seafarers are not able to communicate effectively with each other, putting safety and the efficient operation of the ship at risk.

In many cases these flags are not even run from the country concerned.

Once a ship is registered under an FOC many shipowners then recruit the cheapest labour they can find, pay minimal wages and cut costs by lowering standards of living and working conditions for the crew.

Globalisation has helped to fuel this rush to the bottom. In an increasingly fierce competitive shipping market, each new FOC is forced to promote itself by offering the lowest possible fees and the minimum of regulation. In the same way, ship owners are forced to look for the cheapest and least regulated ways of running their vessels in order to compete, and FOCs provide the solution.

FOC Countries

The following 32 countries have been declared FOCs by the ITF's Fair Practices Committee (a joint committee of ITF seafarers' and dockers' unions), which runs the ITF campaign against FOCs:

Antigua and Barbuda	Gibraltar (UK)
Bahamas	Honduras
Barbados	Jamaica
Belize	Lebanon
Bermuda (UK)	Liberia
Bolivia	Malta
Burma	Marshall Islands (USA)
Cambodia	Mauritius
Cayman Islands	Mongolia
Comoros	Netherlands Antilles
Cyprus	North Korea
Equatorial Guinea	Panama
French International Ship Register (FIS)	Sao Tome and Principe
German International Ship Register (GIS)	St Vincent
Georgia	Sri Lanka
	Tonga
	Vanuatu

Source: ITF website: www.itfglobal.org

Appendix C

Section 8A

Section 8A of the *Navigation Act 1912* empowers the Australian Maritime Safety Authority (AMSA) to declare in writing that the Act applies to an off-shore industry vessel.

The following vessels have been declared to be off-shore industry vessels to which the Act applies:

VESSEL	No.	OWNER/OPERATOR	DATE OF EFFECT
Edda Frigg	9127320(IMO)	Adsteam Offshore	6.8.04
Maersk Helper	734726	Adsteam Offshore	9.9.04
Jan Steen	1173	Ballast Ham Dredging Pty Ltd	20.8.04
Ocean Hercules	3EEE6	Darwin Offshore Logistics Base	2.7.04
Miclyn Achiever	384031	Mermaid Marine Australia Pty Ltd	18.6.96
Northern Explorer III	10849	Northern Offshore	7.04.98
OMS Discovery	858410	Offshore Marine Services Pty Ltd	31.8.07
OMS Quest	858411	Offshore Marine Services Pty Ltd	31.8.07
OMS Voyager	853450	Offshore Marine Services Pty Ltd	31.8.07
OMS Endurance	858273	Offshore Marine Services Pty Ltd	8.2.07
RV Platypus 1	396360	Submersible Equipment & Services Pty Ltd	24.6.97
Krisna	384980	Total Harbour Services P/L	21.7.98

Sections 8AA

Section 8AA of the *Navigation Act 1912* empowers AMSA to declare in writing that the Act applies to a trading ship even when a ship is proceeding on a voyage other than an overseas voyage or inter-state voyage.

The following ships have been declared to be trading ships to which the Act applies:

VESSEL	No.	OWNER/OPERATOR	DATE OF EFFECT
Alltrans	850587	ASP Ship Management	25.11.02

Boomerang 1	9309162	ASP Ship Management	13.4.06
Endeavour River	850139	ASP Ship Management	1.7.93
Enterprise	8321890	ASP Ship Management	30.7.96
Fitzroy River	850138	ASP Ship Management	1.7.93
River Boyne	850245	ASP Ship Management	1.7.93
River Embley	850352	ASP Ship Management	1.7.93
Spirit of Tasmania I	857101	ASP Ship Management	2.7.02
Spirit of Tasmania II	857102	ASP Ship Management	2.7.02
Vigsnes (<i>ex Iron Sturt</i>)	374942	ASP Ship Management	15.8.96
Northwest Sanderling	853416	Australian LNG Ship Operating Co Pty Ltd	3.10.96
Northwest Sandpiper	853795	Australian LNG Ship Operating Co Pty Ltd	3.10.96
Northwest Snipe	853794	Australian LNG Ship Operating Co Pty Ltd	3.10.96
Northwest Stormpetrel	854387	Australian LNG Ship Operating Co Pty Ltd	3.10.96
British Loyalty	9285720	BP Australia Pty Ltd	31.8.07
British Fidelity	9285744	BP Australia Pty Ltd	18.1.07
Jasmine	9252072	BP Australia Pty Ltd	18.1.07
Alcem Calaca	857321	Cementco Shipping	14.10.04
CSL Pacific	851802	CSL Australia Pty Ltd	18.11.02
Stadacona	9000032	CSL Australia Pty Ltd	23.10.02
Naftocement XV	9372640	CSL Australia Pty Ltd	4.3.08
Triton	858262	Gardline Shipping Group	8.10.07
Claudia 1	725454	Hanson Construction Materials Pty Ltd	26.10.04
Accolade II	396260	Intercontinental Ship Management	8.11.02
Lindesay Clark	851757	Intercontinental Ship Management	11.11.96
Portland	852721	Intercontinental Ship Management	11.11.96

Armada Cinta	325880	Perkins Shipping Pty Ltd	14.7.04
Biquele Bay	390234	Perkins Shipping Pty Ltd	14.7.04
Brisbane	856630	Port of Brisbane Corporation	13.11.2000
Cementco	374851	Queensland Cement Limited	12.9.96
Warden Point	853776	Queensland Cement Limited	12.9.96
Helix	855765	Shell Company of Australia	2.6.97
Nivosa	851138	Shell Company of Australia	20.6.96
Pacific Responder	858160	Swire Pacific Offshore Pty Ltd	31.8.06
Basker Spirit	9002386	Teekay Shipping (Australia) Pty Ltd	10.2.06
Iron Monarch	355462	Teekay Shipping (Australia) Pty Ltd	15.8.96
Iron Yandi	855550	Teekay Shipping (Australia) Pty Ltd	23.5.97
Pioneer	855492	Teekay Shipping (Australia) Pty Ltd	15.8.96
Seakap	854247	Teekay Shipping (Australia) Pty Ltd	15.8.96
Barrington (ex Australia Sky)	853229	Teekay Shipping (Australia) Pty Ltd	27.3.96
Palmerston (ex Ampol TVA)	853755	Teekay Shipping (Australia) Pty Ltd	27.3.96
Volvox Delta	17008Z-Rott1983	Van Oord ACZ	7.5.98

