

**INDEPENDENT REVIEW OF AUSTRALIAN
SHIPPING**

**A BLUEPRINT FOR
AUSTRALIAN SHIPPING**

September 2003

IRAS

INDEPENDENT REVIEW OF AUSTRALIAN SHIPPING

Mr D Sterrett
Chairman
Australian Shipowners' Association
Level 1
4 Princes Road
PORT MELBOURNE VIC 3207

18 September 2003

Dear Mr Sterrett

We have pleasure in presenting the results of the Independent Review of Australian Shipping (IRAS).

We were commissioned a year ago to identify an environment in which fresh investment in Australian tonnage could be fostered. The attached "blueprint" details the problems and the opportunities that exist for their solution.

Our overwhelming view is that there is a future for Australian participation in shipping, both domestically and internationally. For that to occur, it will require the commitment of all industry parties in co-operation with government.

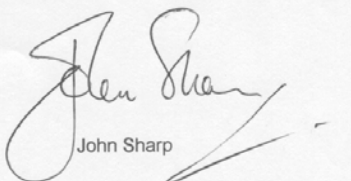
In formulating our proposals we believe it is essential for the industry to be independent of government largesse. We equally believe, however, that government has a key role to play in the industry's future.

We would like to record our appreciation to all those who provided us with submissions, both written and oral. Our thanks go also to the IRAS members, who gave their time and experience. We would also like to thank the Minister for Transport and Regional Services, the Hon John Anderson, for acting as our host at the seminar held in Canberra on 18 June 2003, and Mr Martin Ferguson AM, Shadow Minister for Transport, for his participation.

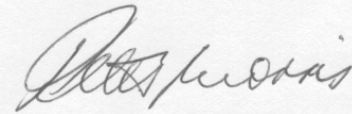
We would particularly like to thank Mr Chris Blower for his role in assisting the Co-chairs.

It has been our pleasure to work together with the industry at a crucial stage in its development.

Yours sincerely



John Sharp



Peter Morris

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EXECUTIVE SUMMARY

INTRODUCTION

1. The concept of IRAS developed from the acceptance by the Australian shipping industry that circumstances had combined to create an opportunity for all the issues that affect the future conduct of the Australian shipping industry to be considered and discussed. It was agreed that all issues, however sensitive, should be raised for discussion.
2. IRAS was initiated by the industry to identify options to build on the industry's strengths, to propose adjustments so that the industry can grow, and to point to external factors that inhibit the industry's prosperity.

THE SITUATION OF THE INDUSTRY

3. The shipping industry in Australia faces a dilemma. On the one hand it has been viewed—and has viewed itself—as peculiarly Australian in an industry that internationally is highly globalised. It is an industry that has taken very substantial strides, within the limits of being an Australian employer, to eradicate inefficiencies that inhibit its competitiveness.
4. The strides taken in the past have been implemented in a context of retaining the core functions—ownership, management, control and crewing of ships—as Australian activities, resulting in the generation of export income for the nation.
5. On the other hand, its customers demand access to competitive shipping services. One of the purposes of IRAS therefore was to identify where Australian practices need to be brought into line with international shipping practices.
6. International shipping and coastal shipping operate in the same industry, but for Australian policy purposes can be viewed separately.

Australian participation in international shipping services.

7. In international shipping there is a global market in which quality operators' costs are reasonably comparable. Capital, insurance, fuel, maintenance and crewing are all costs for which there are global markets accessible to all operators.
8. In order to access providers in those global markets, Australian ship operators need to be unencumbered by constraints that inhibit their ability to conduct their businesses in a way that reflects best, internationally competitive, ship operation practices.
9. The constraints on Australian operators include:
 - inability to choose the ship-registry regime of their choice because of the operation of the *Shipping Registration Act 1981*;

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- inability to recruit and employ Australian officers at internationally competitive terms in accordance with international employment practices because of the operation of the *Income Tax Assessment Act 1936*, which treats international seafarers differently to other Australians who derive their income overseas.
 - a negative attitude to participation by Australians in shipping which is characterised by the long-held sectoral view that Australia is a “shipper not a shipping nation.”
10. IRAS has proposed measures that will address all of these concerns by:
- a simple change to the *Shipping Registration Act 1981* that would remove the prohibition on Australian entities registering ships outside Australia.
 - a simple change to the *Income Tax Assessment Act 1936* that would, by solving the dilemma of the meaning of the word “country” not being taken to include the high seas, remove the differential treatment of Australian-resident taxpayers who are seafarers vis-à-vis Australian resident taxpayers who are employed ashore.
 - an acceptance by all stakeholders in the Australian shipping industry that best international shipping practices are capable of being embraced by Australians and that doing so will create job opportunities and will create opportunities for Australians both at sea and ashore in the future—opportunities that are difficult to envisage without acceptance of change.
 - an acceptance by government that the Australian shipping industry is not seeking subsidy or special treatment and that Australian skills, with minor legislative adjustments, can be competitively applied in the global shipping industry so that Australia can benefit from being both a shipper and a shipping nation generating export income.

Australian participation in Australian domestic shipping services.

11. The coastal shipping industry in Australia is in a confused and confusing situation. The regulatory provisions of Part VI of the *Navigation Act 1912* make permits and licences available for vessels, including foreign owned, to participate in the coastal trade.

12. The interaction of a number of different pieces of legislation causes a competitive disadvantage to Australian operators whose ships operate permanently on coastal trades compared to the less onerous regulatory environment applicable to foreign vessels that work on the coast under permits.

13. This is clearly anti-competitive and reflects the fact that Part VI of the *Navigation Act 1912* was created when the circumstances of coastal shipping were very different to those of 2003. The impact has been exacerbated by ad hoc steps taken to liberalise the coastal shipping market for non-Australian operators without taking into account the competitive disadvantage imposed on Australian operators.

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Such vessels are not burdened by the Australian tax system, employment conditions and employee costs.

14. The permit system is administered within guidelines that have anti-competitive consequences. There are also wide social policy questions such as the ability of foreign labour to work in foreign vessels in an Australian domestic industry for extended periods. There is no doubt that foreign operators intent on utilising such a provision will retain foreign labour in the Australian domestic transport industry for as long as they are allowed to.

15. The provisions of the *Navigation Act 1912* that regulate the conduct of coastal shipping should be reviewed. The review should have regard to transport, customs, immigration, taxation, workplace relations, competition and other relevant policy considerations.

16. A review of Part VI of the *Navigation Act 1912* might be complex and protracted. Other key proposals of this blue print should not be delayed and they should be progressed immediately.

17. It should be noted that IRAS did not set out to become involved in detailed industrial issues such as terms and conditions of employment. Therefore questions such as rates of pay and leave arrangements are matters for individual employers to negotiate with their employees and their representatives under the enterprise bargaining process.

ECONOMIC IMPACT OF REDUCTION IN AUSTRALIAN FLEET

18. Access Economics in conjunction with the Apelbaum Consulting Group modelled the impact of a reduction in the number of Australian ocean-going vessels from 51 in 2001 to about 30 in 2010 and a reduction in Australian shipping costs, on the Australian economy.

The Modelled Effects of Maintaining Current Government Policy

19. The modelling demonstrates that if current Government shipping policy is maintained and the presence of Australian ocean-going shipping declines to about 30 vessels, then the industry's export income-generating activity contracts and imports of shipping substantially increase with a resulting negative impact on the balance of payments, the Australian exchange rate depreciates and resources move into export and import replacement activities, thereby reducing the capacity to supply goods and services for private consumption.

20. At the same time, depreciation in the Australian exchange rate increases the price of investment goods, which have a high import content. The cost of capital rises relative to that of labour, reducing the capital stock. Economic activity (measured by gross domestic product) declines, as does business investment and the real wage rate. Net private consumption (or welfare) increases, because there is a reduction in the requirement to save, reflecting the lower capital stock.

The Modelled Effects of Reducing Shipping Costs

21. The Access Economics modelling also estimated the economic impacts of reducing the cost of Australian shipping by introducing some foreign crew and clarifying/amending existing regulations which would serve to provide greater confidence in the future of Australian shipping. It examined the effects of reductions in Australian manning costs of about \$1 million per vessel for all international vessels and a 10 per cent reduction in other operating costs for all vessels. Assuming that this would result in the retention of an additional 9 vessels in 2010, the modelling demonstrates that business investment, the gross domestic product, the nominal exchange rate and welfare would all increase.

MARITIME SKILLS

22. One of the most prevalent concerns in the Australian maritime sector is the real and genuine concern over a looming shortage of persons with prerequisite seagoing qualifications. The diminishing number of young persons being trained as seafarers in the Australian-controlled fleet is contributing to an ageing skills base. There is also a widespread concern that seafarers are spending less and less of their working lives at sea.

23. The reduction in numbers of young Australians being recruited is a consequence of two things:

- the uncertainty that permeates the industry because the regulatory environment appears unpredictable and unreliable, both of which hinder investment in new and replacement tonnage; and
- the opportunity to recruit, train and place young Australians as officers in international fleets is hindered because of the denial of the application of Section 23AG of the *Income Tax Assessment Act 1936* to Australian resident taxpayers who are ships' officers. Placement of such people would not only be in Australian ships but ships of foreign operators as well. Foreign operators welcome the opportunity to employ Australians.

24. It seems that young Australians who wish to legitimately avail themselves of lucrative employment in the international shipping industry must cease to be Australian residents in order to align themselves with other categories of Australian residents who seek employment in the increasingly global market place for competent and skilled personnel. Many if not most young people embarking on their careers are understandably reluctant to move permanently from Australia. This actively discriminates against Australians.

KEY PROPOSALS

25. The following summarises the key proposals of the Review.

I Clarity and certainty of Government policy and regulation

The Review concluded that a business environment in which regulatory policies and the administration of legislation is certain and stable over time is essential to sound investment decision-making. Instead, investment decisions are currently being made that reflect the current atmosphere of change and uncertainty.

The Review also heard evidence that the regulatory activity of Government had in some cases actively discriminated against the Australian industry.

There is clear evidence that there are sectors of the Australian industry capable of competing effectively where the regulatory framework is clear, consistent over time and applied equally to all participants.

The provisions of the *Navigation Act 1912* that regulate the conduct of coastal shipping should be reviewed. The review should have regard to transport, customs, immigration, taxation, workplace relations, competition and other relevant policy considerations.

II Provide optimum shipping arrangements for shippers

The Review considers that effective competition must clearly be service-oriented, i.e. that the Australian industry must be capable of providing shipping services that meet the needs of shippers. The Review heard evidence that new ventures providing shippers with regular services at competitive prices could be a reality if a clear and consistently applied regulatory environment were available.

III Identification of the National Interest

The Review appreciates that the development and implementation of Government policy must take account of the "national interest". In particular, some legislation specifically requires that regard be had to the national interest. The Review is aware, however, that it is not always clear how the national interest is determined, and by whom. The Review is also conscious of the fact that what may be in the interests of one sector of the nation is not necessarily in the interests of another sector

The Review considers that, where the national interest is a factor in developing or applying shipping policies, the process by which the

national interest is determined should be clearly identified and that those affected should have adequate opportunity to contribute.

IV Personal tax treatment issues.

The Review heard very strong evidence that the inconsistent interpretation in Australia of the concept of employment in a foreign country discriminated against Australians in finding employment in international seafaring trades. Therefore, Section 23AG of the *Income Tax Assessment Act 1936* needs to be reviewed to ensure consistent interpretation of the concept of employment in a foreign country.

The Review also considered Section 23AF of the *Income Tax Assessment Act 1936* and found similar concessions available for consultants and contractors working overseas, and considers that these principles should be tested to see if they apply to Australian seafarers. The Minister for Trade, responsible for the granting of these concessions under 23AF, should consider a proposal for an international vessel to be deemed to be a project for the purposes of this section of the *Income Tax Assessment Act 1936*.

V Flexibility of crew numbers/skills

The Review heard evidence that some operators had difficulty in getting maintenance done on-board at a reasonable cost. Others had observed that in some situations shore-based maintenance could be more costly. It was suggested to the Review that consideration could be given to the possibility of a wider range of occupations being represented in crews in some circumstances; fully trained integrated ratings may not be required for all tasks on board ship. The Review sees merit in employees and employers discussing the possibility of a more flexible range of occupations and skill levels on board ship.

VI Mixed manning

For the purposes of equity and jobs growth, it is necessary to ensure that the circumstances of Australian resident taxpayers in international trading vessels are no different under the *Income Tax Assessment Act 1936* from other Australians employed in a foreign country. In that context, the Review notes that some participants have agreed that for the development of Australian seafarers' and Australian shipping interests' participation in international trading there are opportunities to crew vessels in new trades with a combination of Australian seafarers and foreign seafarers.

Some vessels may be subject to special pre-existing agreements as to their Australian manning and such vessels would remain subject to those agreements.

For example, some vessels may be fully Australian manned while others may be mixed-manned with the level of Australian participation being dependant upon the viability of the trade, the nature of the ship and the applicable legislation including the taxation position.

This will create training, job and career opportunities for Australians in an expanded presence in international trades, including Australian ratings who may choose to further train as officers. The skills base of qualified Australians in the maritime and related industries will be enhanced as a result.

VII Ship registration

Although not unanimously supported by stakeholders, the Review urges that the recommendations of the review of the *Shipping Registration Act 1981*, particularly with regard to Section 12 of the Act be implemented as soon as possible.

VIII National security

The Review notes the apparent inconsistency between the Government's policy for coastal shipping, i.e. to obtain the cheapest priced shipping services by accessing foreign ships, and its policy of strengthening border protection.

The Review notes measures to be undertaken by the US Government to limit access to its coastline to those vessels and crew from nations regarded as having a high degree of security. The Review received evidence that Australia risks losing access to US markets due to the use of foreign flagged vessels and crews that do not have the high degree of security required under their strengthened border protection regime.

Evidence was provided confirming that increased security would result in increased costs that will be borne by the shipping task. Australia faces the challenge of remaining competitive, as some competitor's governments will meet all or a portion of the increased security costs. Therefore any new measures would need to be pursued within competitive bounds.

IX Customs Act

The Review heard evidence of differences between Australia and countries in competition for shipping business in their treatment of some items for customs purposes. The Review again draws the attention of Government for the need to remove barriers to competition by Australians.

X *Training*

The Review heard evidence of the need for skilled seafarers for a wide range of occupations in the industry. The Review also heard evidence of the need for an industry forum, such as National Maritime Industry Training Council (NMITC), to progress and enhance career paths and competencies. In this context, concern was expressed that existing federal Government funding could be more effectively channelled.

XI *Seafarers' compensation*

The Review strongly urges the participants to investigate alternative forms of coverage under the existing *Seafarer's Rehabilitation & Compensation Act 1992* that reduces the cost of providing comparable cover.

The participants are also urged to rectify negative perception of the performance of the industry.

XII *Tonnage tax*

The Review considers the introduction of a tonnage-based company tax should be given urgent consideration in Australia as an alternative to traditional company tax. This has led to a revitalised shipping industry in countries that have adopted such a system.

THE DEFENCE ISSUE

26. A question that is often raised in connection with the Australian shipping industry is the retention of an Australian fleet in case of a military requirement for an Australian merchant shipping capacity.

27. If there is any weight to be placed on the existence of an Australian shipping capacity it has not been raised with the industry by any government agency. The experience of the industry is that the Department of Defence has made no overtures to industry in connection with Australia's merchant navy capacity. Commercial imperatives drive private investment in the shipping industry and there is no discernible influence on those imperatives from a defence point of view. This is made the more puzzling in light of the growing practice of Navy outsourcing a number of its previously traditional tasks which require maritime skills and expertise. These include ship provedoring, port management, crew training and through-life vessel support services

28. The Australian shipping industry believes it should and would support a defence requirement in a defence emergency but in the absence of any discernible interest from Government in this regard, it is not an issue that influences the shipping industry's investment behaviour.

IRAS AND ITS ORIGINS

29. Many Australian businesses choose to, or have to, operate shipping under their corporate control and do so as part of a global market. The regulatory circumstances in Australia have not kept pace with the development of this global market and Australia's participation in it.

30. One of the purposes of the IRAS is to build a foundation for growth of Australian participation in global shipping markets or, if the Government is not inclined to participate in that initiative, to facilitate the ability of Australian business to take its shipping interests outside Australia to the extent necessary to be internationally competitive and at the same time to retain and grow the managerial (ie shore) and technical seagoing skills (ie at sea) of Australians

31. The Australian shipping industry has experienced positive change over the last two decades. Despite this, the number of Australian flagged vessels has declined and continues to do so. Currently many Australian controlled vessels are approaching the end of their economic life. Consequently, Australian ship owners and operators are faced with major capital expenditure decisions. In these circumstances the industry needs to establish an environment that is conducive to fresh investment in new and replacement tonnage.

32. Australian ship operators confront choices in a very different environment to that of the last round of major investment in the early 1990's.

33. Commercial pressures are such that many Australian entities that operate ships have taken steps to ensure that their ships can be registered outside Australia to take advantage of financial facilities unavailable in Australia or inhibited by Australian law. As a consequence the number of foreign-registered vessels operated by Australian entities has increased while the number of Australian registered vessels has decreased, with the resultant negative impact on the balance of payments.

34. A threshold issue addressed by IRAS participants was their impression of what was understood by the term "Australian shipping". It emerged that the term was accepted as not being confined to Australian-registered shipping but embraced shipping operated by Australian entities. This is a wider use of the term than has been the case in various stages of shipping reform and indicates a more global appreciation of shipping operated by Australians than has been the case in the past.

35. Time charterers for the most part use foreign ships and foreign crews and accordingly do not have the same financial commitment to the industry as Australian entities which are ship owners and operators nor do they train Australians and develop maritime skills amongst a sea going workforce to the benefit of Australia.

36. This report concentrates on the circumstances of ship operations and the business and employment opportunities for Australians ashore and at sea which

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would flow from an increased participation by Australians in the carriage by sea of Australia's domestic and external trade.

37. For these reasons, the Australian Shipowners Association (ASA) decided to sponsor a review in which the following central stakeholders participated:

ASP Ship Management
Australian Institute of Marine & Power Engineers
Australian Maritime Officers Union
BHP Billiton
Caltex Australia
CSR Shipping
Jebsons International (Australia)
Maritime Union of Australia
Queensland Alumina Limited
Stolt-Nielsen Transportation Group
Teekay Shipping (Australia)

The Review was co-chaired by The Hon Peter Morris and the Hon John Sharp, both former Transport Ministers in the Hawke and Howard Governments respectively.

38. The Review held its first meeting on 24 September 2002.¹ At that time, it was anticipated that its work would be completed by the end of February 2003. That did not prove possible for a number of reasons, the most important of which being that it became clear early on in the process that solutions to the industry's current problems would not be found by taking a narrow approach to the industry. Indeed, at its first meeting there was a general feeling among members that the Review would have to cast its net widely to include activities such as ship management, port services and many other marine related services.

39. The Review received 19 written submissions.² In addition, the co-chairs met personally with 70 senior managers in 32 organisations, covering a wide spectrum of shipping and Government activity.³

40. The review process culminated in a seminar in Parliament House, Canberra on 18 June 2003, hosted by the Minister for Transport and Regional Services, the Hon. John Anderson. The seminar, which was attended by invited representatives of industry, unions and government,⁴ provided an opportunity for stakeholders to provide comment and input to the Co-chairs before the draft blueprint was finalised.

¹ The opening statement setting out the aims of the Review is reproduced at Appendix 1.

² A list of written submissions is at Appendix 2

³ A list of persons who met with the co-chairs is at Appendix 3.

⁴ A list of those who attended is at Appendix 4.

THE MARITIME SECTOR

41. As mentioned above, it became apparent to the Review at a very early stage that it needed to concern itself with the wider maritime sector as well as the more narrowly defined Australian shipping Industry.

42. The narrower definition includes both owners of Australian-flagged ships and time charter operators. The number of companies active in the latter market segment varies between 30 and 40, depending on the state of the market. They take foreign ships on time charter (rather than investing in and owning ships) and operate their own voyages as though they were owner.

43. The wider sector includes a number of maritime related activities including those summarised below.

Ship brokers.

44. In Australia, ship brokers generally act as chartering agents/brokers for the industrial and trading companies that have cargoes to be moved. Ship brokers are also involved in ship sale and purchase activities, and in representing overseas ship yards in marketing their services and negotiating dockings and ship repairs. There are three major foreign owned and a number of smaller Australian owned broking houses, spread between Perth, Melbourne, Sydney, Brisbane and Townsville, and all have networks of correspondent brokers and ship owner contacts worldwide.

Port agents.

45. These fall into two categories—liner agents and tramp agents. The liner agents commercially represent liner companies trading to and from Australia, marketing their services among the trading houses, importers and exporters and collecting freight on owner's behalf and issuing Bills of Lading, as well as operationally handling the ships whilst they are in port, acting as the interface between the cargo interests, the port authority, the stevedores and other service providers.

Ship managers.

46. These companies act as crewing agents and technical managers of the ships themselves, whether they trade internationally or domestically in circumstances where the ship-operator contracts these services out. They variously employ the crews, arrange repairs and organise maintenance schedules, provide lube oils and provisions, arrange insurance cover for crew and hull and machinery, work closely with statutory authorities and classification societies, and general ensure that the ship gets from load port to discharge port safely and efficiently.

Port service companies

47. These include the port authorities, privatised and publicly owned, and those companies which provide services essential to getting into and out of ports, such as towage and pilotage companies.

Stevedores and terminal operators.

48. Apart from the two major container terminal operators/stevedores, there are many other private terminals specialising in certain types of bulk, bulk liquids and breakbulk cargoes, spread around the country's 100+ ports. Some stevedoring companies and terminals are owned and operated by cargo interests, some by port authorities, and many are small entrepreneurial organisations with one or two clients only.

Ship service companies.

49. These include ship repair yards, labour contractors working in the ship repair field, provedores, ship chandlers, marine equipment manufacturers and service technicians attending to various specialised pieces of shipboard equipment.

Marine insurance, classification societies and marine surveyors.

50. This group varies from the large Australian and internationally owned marine underwriting companies, to the insurance broking houses, local representative offices of the international classification societies, and the small independent ship and cargo surveying companies, who are spread around every port in Australia.

Maritime financiers.

51. Whilst the big local banks finance ships for trading within Australia (from container ships down to trawlers and port service boats—tugs, launches), there is a general reluctance for them to finance ships that trade internationally, primarily as they do not fully understand the business and their prudent nature deems international shipping too risky, a view not shared by financial institutions outside Australia. Therefore, there is a secondary market serviced by maritime finance brokers, who act as intermediaries between ship owners and the major specialist international ship finance banks. These maritime finance brokers also arrange trade finance for cargo interests/trading houses, and for local time charter operators.

Freight forwarders and customs brokers.

52. In the liner container trades and specialist project cargo/break bulk field, freight forwarders play an important role. Effectively, they act as logistics providers to the cargo interests, taking the cargo from the warehouse door and delivering it to the site at the other end. This includes arranging the land and sea freight, packaging, documentation, customs clearance, insurance, cargo surveys, and stevedoring.

Bunker providers and brokers.

53. This includes most of the oil majors with refineries in Australia. There is also a group of small specialist bunker brokers and oil traders who arrange bunkers for ships on a world-wide basis. Some act as a Principal in the transaction, and others as a broker or agent, taking a fee or commission as remuneration.

HISTORY OF THE INDUSTRY

54. It is inevitable that the almost complete dependence of the early Australian colonists on supply by sea made shipping one of the earliest of Australian industries.

55. Shipping is a global business with an international structure. It is not unusual for shipping companies in one country to have ships built in another country, registered in another, crewed by nationals of another, managed by a company in another and providing shipping and related services in yet another. It is an industry characterised by a high degree of freedom of movement of capital and labour. Internationally it is an industry known for its lack of transparency and characterised by severe fluctuations in shipping markets.

56. The international shipping industry is intensely competitive. Supply has exceeded demand for shipping services for some years and there have been severe economic pressure on ship operators worldwide.

57. Most developed economies with established marine industries have sought to retain the benefits associated with retention of their national shipping industries by, for instance, a variety of fiscal support measures to preserve or restore their national fleets. Even more widespread is a policy of reserving the carriage of domestic cargo to national carriers (generally known as cabotage): the US, Japan, UK and the EU are notable examples.

58. In Australia, the position has been somewhat different. Because Australian ships were registered as British ships until 1982, Australian legislation has never specified that Australian ships be used for the carriage of domestic coastal cargo. Instead, a licensing system is in place under which a ship of any nationality may be issued a licence to engage in the coasting trade provided only that the crew is paid Australian rates of pay. At the discretion of the Minister (or his delegate), any unlicensed ship may, in certain circumstances, be issued with a permit to carry coastal cargoes.

59. The circumstances in which a permit may be issued are:

- No licensed ship is available for the service or the service as carried out by a licensed ship or ships is inadequate; and
- The Minister is satisfied that it is desirable in the public interest that unlicensed ships be allowed to engage in that trade.

The Review heard overwhelming evidence that over the past few years the criteria have been administered in such a way that the coastal trade could now be regarded as virtually deregulated.

REFORMS IN THE MODERN ERA

60. Modern reform of the shipping industry effectively began in 1984 when a financial package came into force resulting from the recommendations of the Crawford Committee, established by the Fraser Government, with Ralph Hunt as Minister, which was comprised of shipowner and union representatives. Briefly, the package provided for depreciation of 20% per annum commencing in the year prior to commissioning (previously 6.25% per annum), provided that the ships achieved manning levels determined by a manning committee. The extension of investment allowance to ships in international trades (previously applicable to coastal vessels only) resulted in orders for 12 new ships. The investment allowance was, however, withdrawn after only 14 months operation.

61. In 1985, the industry parties organised an overseas study mission to study manpower and training developments. Following the report of the overseas study mission, Minister Morris established the Maritime Industry Development Committee (MIDC). Its report "Moving Ahead" focussed on a radical reappraisal of shipboard management and work practices. It envisaged crews of 21 on next generation Australian ships and laid the foundation for integrated ratings. The Government endorsed the MIDC report and introduced legislation to provide capital assistance with purchase of new (or newly acquired second-hand) vessels.

62. In 1988, a Shipping Reform Task Force, chaired by Mr Ivan Deveson AO, was established by the Federal Government to develop a strategy for further development of the industry. The task force developed an agreed package of reforms which it anticipated would reduce the operating costs of Australian ships to that of comparable OECD ships with national crews. The Government accepted the broad thrust of SRTF and, among other things, extended the 7% Capital Grant and accelerated depreciation for additional five years, contributed up to \$24,000 per package to a one-off redundancy scheme, introduced programs to reduce crews on existing ships and established the Shipping Industry Reform Authority (SIRA) for three years to oversee the detailed development and implementation of the reform strategy.

63. By the end of 1992, manning reductions in Crawford vessels to MIDC levels had been completed, with average crewing levels reduced from 25.9 to 21.9 in these vessels. SIRA (the life of which was extended) negotiated a further reduction in average crew size to 18 by 1994.

64. In September 1994, a PAYE rebate scheme for ships trading internationally was adopted by Government as part of the resolution of a dispute over the sale of ANL. It commenced in July 1995. This was based on a scheme used in a number of shipping countries and was judged the most suitable of the schemes offered to the shipping industries of Japan, France, the UK, the USA, Norway, Denmark and Germany all of which were studied at the time.

65. In May 1996, the Government terminated the PAYE rebate scheme, the capital grant and the accelerated depreciation provisions. In August of that year, the

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then Minister established the Shipping Reform Group (SRG). The SRG reported in March 1997, but the Minister sought alternative proposals to SRG recommendations.

66. Following implementation of enterprise employment in July 1998, the Minister agreed to consider progress made on enterprise employment and crew-cost reductions and the establishment of working group to consider, amongst other things, the reforms needed to create an internationally competitive Australian shipping industry. This resulted in the establishment of the Shipping Reform Working Group, which reported to the Minister in May 1999.

67. The Government decided not to provide fiscal assistance to the Australian shipping industry. It did however announce that it was continuing to consider maritime policy issues. In December 2001, the Minister conceded that the Australian shipping industry's contention that it is subject to an anti-competitive regulatory regime is "not without merit".

68. The world seaborne trade amounted to 5,832 million gross weight tonnes in 2000/01. Australia's share of the world seaborne trade (in term of tonnes) continued to grow equating to 8.5 per cent in 2000/01 compared to 7.8 per cent in the preceding three (3) years.

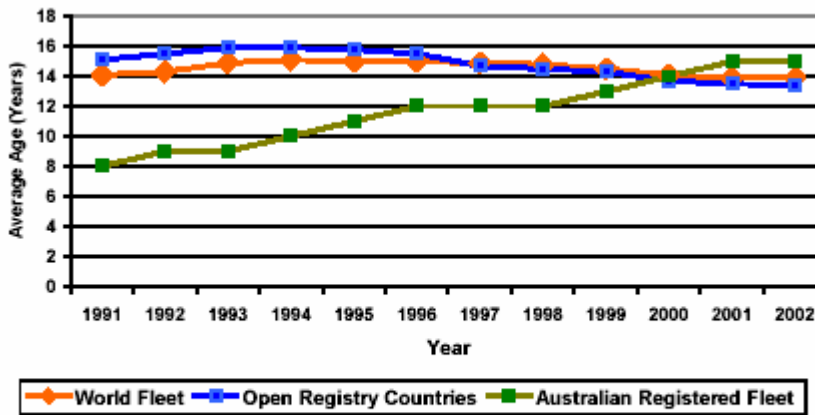
69. The Australian seaborne trade amounted to 564.6 million tonnes in 2001/02, 506.6 million tonnes of exports and 58.0 million tonnes of imports. Forecasts suggest that Australia's annual external maritime trade may grow by 268.6 million tonnes to 815.5 million tonnes in 2010/11.

70. Despite continuing growth in the Australian seaborne trade, the role of Australian-flag shipping in servicing Australia's imports and exports continues to diminish, declining by 5.5 per cent between 2000/01 and 2001/02. The market share achieved by Australian-flag shipping is only 1.4 per cent.

71. The annual Australian interstate and intrastate sea freight amounted to 52.0 million tonnes in 2000/2001. However, despite an increasing interstate and intrastate sea freight task, the share of the domestic transport task undertaken by interstate and intrastate shipping has steadily declined, reducing from around 40 per cent to around 25 per cent over the last 15 years.

72. There were 54 Australian flag vessels in June 2002, a reduction of 24 over a decade. The average age of the Australian fleet is about 15 years. In addition, there were 36 vessels operated from Australia but flagged offshore.

Figure 1: Average Age of Australian and World Fleets - Years

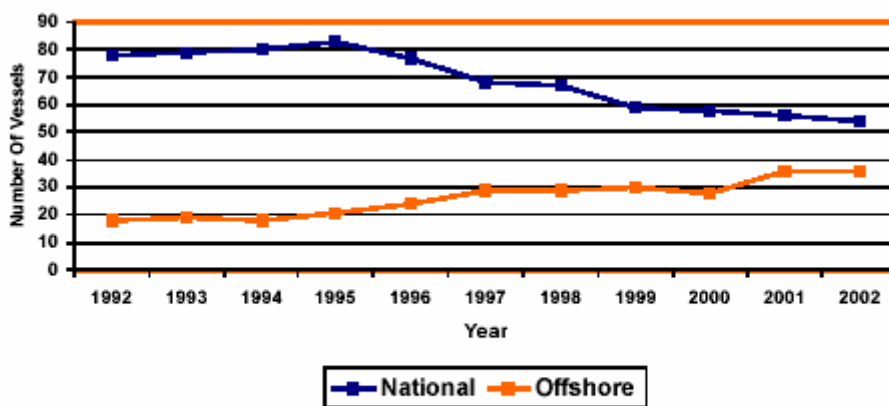


Source:
Table A-11.

73. It can be seen that the average age of the Australian fleet in 2002 was greater than the average age of both the world fleet and the open register fleet.

74. In addition, there were 36 vessels operated from Australia but flagged offshore, double the number ten years ago. The table below indicates the trend away from registration under the Australian flag for vessels controlled by Australian entities.

Figure 2: Australian-controlled Vessels – Australian registration versus Foreign Registration



Source:
Table A-13.

WHY AUSTRALIA HAS BECOME UNCOMPETITIVE

75. Australia's national-flag shipping industry has declined steadily over the last two decades (79 in 1994 to 54 in 2002), due to increased competition from foreign competitors and the number of vessels has also reduced as a consequence of the greater efficiency of larger vessels performing the task previously undertaken by a larger number of smaller vessels.

76. Domestically, the industry enjoyed a cabotage regime that effectively protected it from competition on the Australian Coast. In addition there was a union-to-union ban on foreign ships carrying freight between Australia and New Zealand. This allowed poor work practices to develop resulting in inefficiencies and industrial uncertainty and a disparity between the cost of foreign shipping and Australian flagged shipping.

77. During the 1980's, changes to cabotage were implemented with the use of Single Voyage Permits, (SVP's) and Continuous Voyage Permits, (CVP's). These permits allowed foreign ships with foreign cost structures to carry freight in the Australian domestic transport industry at substantially reduced rates.

78. Shipping is both a truly global industry and capable of moving major capital assets to a destination that offers the best economic return. Consequently foreign shipowners have had the benefit of accessing the lowest cost crews, and tax regimes that offer rates of tax that are either very low or zero.

79. Australian living standards, wages and conditions of employment, and tax rates are substantially higher than those applying to crew employed on most foreign shipping. Australian shipping can never expect to compete against these ships. No Australian would accept wages and conditions that match those of the lowest levels of developing nations.

80. Representations from Australia's ship owners and operators make it clear that the future for Australian shipping is to be found by focussing on niche markets, where quality, professional skills and reliability are called for. In these markets Australia has the potential to compete effectively. To do so, the impediments that make it uncompetitive must be removed. The removal of these impediments should not lead to the exploitation of Australian workers, but result in securing the future of Australians engaged in the maritime sector.

81. Issues put to the Review as needing resolution are:

- the difference between Australian crew costs and those of quality foreign crews;
- the impact of higher on-costs involved in employing Australians, such as seafarers' compensation and leave arrangements;
- a lack of manning flexibility;
- the lack of a competitive tax system for Australian seafarers working in international trades, and

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- confusion and inconsistency in the application of the regulation of shipping under Australian law.

82. Addressing these issues will help overcome the AUD 2 to 2.5 million per vessel per year cost difference between Australian vessels and comparable foreign crewed vessels.

HOW DOES AUSTRALIA INCREASE ITS SHARE?

83. If Australia is to retain a viable shipping industry it must undergo significant change. Without these changes shipping will continue its steady decline to the point where the entire task will be undertaken by foreign ships.

84. Shipping must see its role as being part of the domestic surface transport industry, competing against other forms of transport, rail and road. For that to become a reality shipping needs to be competitive and reliable. Unfortunately its history has been quite different, resulting in shippers relying upon road and rail for their domestic transport solutions.

85. The stark reality of the industry's position and the Government's attitude to it is evidenced in the Federal Governments recently released blueprint for the Australian transport industry, *Auslink*. Shipping was not included in it.

86. Shipping must become an integral part of the national logistics chain. To achieve this it must create a reputation for reliability and cost effectiveness. Flexibility and industrial cooperation blended with a focus on the customer and entrepreneurial drive have to be the key elements of the new shipping culture. In recent years two of Australia's largest logistics operators, Toll and Patrick's have established positions in the shipping industry. Their operations provide a complete logistics service to their clients. This is an opportunity for shipping to participate in the domestic logistics business by providing competitive and reliable services to these and other companies carrying the national freight task.

87. The Review heard convincing evidence from one of the nation's largest logistics providers that there was a real opportunity for the shipping industry to establish a competitive east-west shipping service.

88. Shipping is dependant upon the efficiency and reliability of other linkages such as port and stevedoring services, road and rail. It is essential that the services that they provide to shipping are reliable and cost effective.

89. Australia must also make the best possible use of those advantages that it does possess. First and foremost, Australia has worldwide reputation as a country with highly skilled people working in the industry. This applies both to seagoing and shore-based occupations. Unfortunately, the shrinking Australian shipping industry is putting this repository of skill and knowledge at grave risk. Fewer companies and fewer training berths have already had a serious effect on the development of the workforce of the future.

90. Australia is also able to earn valuable export income from its maritime training facilities. But the weaker the domestic industry becomes, the more difficult the maritime training colleges will find it to sustain this kind of export activity.

91. Australians are also highly regarded in other related activities. The Review heard a wealth of evidence that Australian skills in vessel design (Australia is in the forefront of fast ferry design and manufacture) and many aspects of ship management and operation are of the highest international standard.

ECONOMIC ANALYSIS

92. Access Economics, in conjunction with the Apelbaum Consulting Group, modelled the impact of a reduction in the number of Australian ocean-going vessels from 51 in 2001 to about 30 in 2010 and a reduction in Australian shipping costs, on the Australian economy.

The Modelled Effects of Maintaining Current Government Policy

93. The modelling demonstrates that if current Government policy is maintained and the presence of Australian ocean-going shipping declines to about 30 vessels, then the industry's export activity contracts and imports of shipping substantially increase with a resulting negative impact on the balance of payments. The modelling assumes that "the exchange rate will vary in order to keep the goods and services balance of trade unchanged". Accordingly, the Australian exchange rate depreciates and resources move from the rest of the economy into export and import replacement activities, thereby reducing the capacity to supply goods and services for private consumption.

94. At the same time, depreciation in the Australian exchange rate increases the price of investment goods, which have a high import content. The cost of capital rises relative to that of labour, reducing the capital stock. Economic activity (measured by gross domestic product) declines as does business investment and the real wage rate. Net private consumption (or welfare) increases, because there is a reduction in the requirement to save, reflecting the lower capital stock.

The Modelled Effects of Reducing Shipping Costs

95. The Access Economics modelling also estimated the economic impacts of reducing the cost of Australian shipping by introducing some foreign crew and clarifying/amending existing regulations which would serve to provide greater confidence in the future of Australian shipping. It examined the effects of reductions in Australian manning costs of about \$1 million per vessel for all international vessels and a 10 per cent reduction in other operating costs for all vessels. Assuming that this would result in the retention of an additional 9 vessels in 2010, the modelling demonstrates that business investment, the gross domestic product, the nominal exchange rate and welfare would all increase.

96. The full range of economic impacts is shown as follows:

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TABLE 4.1 - IMPACTS OF PROJECTED REDUCTIONS IN THE AUSTRALIAN SHIPPING FLEET

	Base solution (2010)	Do nothing scenario (2000-01)	Reduced costs scenario	2010 relative 2000-01	Reduced costs relative to 2010
'Ocean' industry impacts					
Number of ships	30	51	39	-21	9
Number of ships with some foreign crew	0	0	21	0	21
Employment	1,615	2,523	2,001	-908	356
Volumes (\$m 2000-01)					
Output	579	954	738	-375	160
Exports	146	213	239	-67	93
Imports	271	6	221	265	-49
Australian usage	707	755	724	-47	17
GDP contribution	270	430	339	-160	69
Macroeconomic impacts					
Real expenditures and incomes (\$m 2000-01)					
Welfare = Private consumption (net)				40	21
Business investment				-73	46
Exports (\$A)				142	-20
Imports (\$A)				173	-42
Gross Domestic Product				-77	102
GDP excluding 'ocean' industry				83	33
Prices and wages (percentage change)					
Consumption prices				0.009%	-0.013%
GDP price				0.011%	-0.015%
Export prices (\$A)				0.053%	-0.037%
Import prices (\$A)				0.028%	-0.020%
Nominal exchange rate				-0.027%	0.032%
Real wage rate				-0.022%	0.012%

Source: Access Economics.

PRIORITY ISSUES

Clarity and certainty of Government policy and regulation.

97. If all sectors of the industry are unanimous on any single issue, it is the need for Government to enunciate a clear, certain and consistent policy towards the industry, and for regulatory activities to be carried out in a consistent way.

98. The Review heard evidence from a number of operators that investment decisions are being hampered by a lack of certainty about the future. The view was put that a number of new shipping projects, and the retention in Australia of others, could be viable if there was some confidence that the operating environment would remain relatively stable.

99. The process most criticised was the administration of Part VI of the *Navigation Act 1912* and in particular the issue of single voyage and continuous voyage permits. While no one suggested to the Review that there is never any justification for the carriage of cargo by foreign ships, there is a widespread view that the permit system

is being misused to enable foreign ships to become regular operators on the coast. Development of regular coastal services is being inhibited by what is seen as capricious administration of the permit system that favours foreign operators at the expense of Australian enterprises.⁵

100. Papers were provided to the Review on the administration of various aspects of the coastal shipping regime by the Australian Customs Service⁶ and the Department of Immigration and Multicultural and Indigenous Affairs.⁷

101. The statement most frequently made to the Review by Australian operators or potential operators was: "we can compete if the playing field is level, but we cannot compete if the Government tilts the playing field in favour of foreign operators who have different tax rules and different crew costs".

102. Other issues of policy and administration are dealt with elsewhere in this report. The remarks made above relating to clarity and consistency apply equally to those.

Conclusion I: The Review concluded that a business environment in which regulatory policies and the administration of legislation is certain and stable over time is essential to sound investment decision-making. Instead, investment decisions are currently being made that reflect the current atmosphere of change and uncertainty.

The Review also heard evidence that the regulatory activity of Government had in some cases actively discriminated against the Australian industry.

There is clear evidence that there are sectors of the Australian industry capable of competing effectively where the regulatory framework is clear, consistent over time and applied equally to all participants.

The provisions of the Navigation Act that regulate the conduct of coastal shipping should be reviewed. The review should have regard to transport, customs, immigration, taxation, workplace relations, competition and other relevant policy considerations.

Provide optimum shipping arrangements for shippers.

103. An important feature of the Review is that the participants included cargo interests as well as ship operating interests. It was clear from the outset that any proposals that did not deliver an efficient and cost-effective service to users of shipping services were doomed to failure. Particularly, in the coastal bulk trades, the

⁵ The prime example of a foreign registered vessel operating on the coast is the *CSL Pacific*, which has operated on the coast for nearly 2 years. See Appendix 7.

⁶ See Appendix 5.

⁷ See Appendix 6.

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cost of shipping was a vital element in the competitiveness of exports. Shipping arrangements that make exports uncompetitive are therefore against the wider national interest.

104. The Review did hear evidence, however, that a viable Australian coastal industry could provide enhanced service to shippers through regularity of service while remaining competitive.

Conclusion II: The Review considers that effective competition must clearly be service-oriented, i.e. that the Australian industry must be capable of providing shipping services that meet the needs of shippers. The Review heard evidence that new ventures providing shippers with regular services at competitive prices could be a reality if a clear and consistently applied regulatory environment were available.

Identification of the National Interest

105. Some legislation specifically requires consideration of the "national interest". Of particular relevance to the Review is the requirement in the *Navigation Act 1912* that the Minister be satisfied that it is "... desirable in the public interest..." that an unlicensed ship be allowed to carry coastal cargo. There does not appear to be any objective criteria for determining what constitutes "the public interest".

106. In a more general sense, the whole philosophy underlying shipping policy- and indeed any policy- must depend on some view of the national interest.

107. What is "in the national interest" depends on the personal view of the speaker on an appropriate balance between competing interests. It is in the interests of the exporter of primary products to have access to efficient transport at the lowest cost. In the light of the large capital commitments required of shipowners, it is in the interests of the shipping industry to obtain sufficient return from freight rates to enable reinvestment. If the two are not compatible, who decides which sectional interest also represents the national interest and using what criteria?

108. The answer must be that it is the role of Government to determine where, among all the competing priorities, the national interest lies. And inevitably, it changes overtime. That is the essence of the democratic process. Unfortunately, the perception is that it is politically too hard to make such decisions. For the shipping industry, the threshold question is: is it in the national interest for Australia to have an indigenous shipping industry, that at the very least enables Australians to exercise control over some proportion of its shipping activity? The Review found that there was scepticism that the present Government will be willing to give a definite answer to that question.

109. The Review finds that surprising. The net annual shipping services deficit decreased by \$25.0 million (or 0.8 per cent) to \$2.9 billion in 2001/02. The annual contribution from Australian shipping to net services increased from \$161 million in 2000/01 to \$180 million in 2001/02.

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110. At the same time, the contribution from foreign shipping to the Australian net services deficit was \$3.1 billion and now constitutes 13.9 per cent of the current account deficit. The following figure outlines the impact of transport on net services and the significance of foreign shipping to the current account deficit.

Figure 3: Contribution of Australian Shipping (positive) and Foreign Shipping (negative) to Net Services



Source:
Table A-15.

111. Adherence to the belief that Australia as a shipper nation and Australia as a shipping nation are somehow mutually exclusive concepts commits the Australian economy to the handicap of a AUD 3 billion deficit through a commitment to foreign shipping rather than internationally competitive Australian-controlled shipping earning export income.

112. In the absence of a clear statement that an indigenous shipping industry is in the national interest, it is vital that all sectors of the industry take every available opportunity to contribute to debate on policy and administration as it occurs. For this reason the Review urges all participants to use any forum available to influence debate.

Conclusion III: The Review appreciates that the development and implementation of Government policy must take account of the "national interest". In particular, some legislation specifically requires that regard be had to the national interest. The Review is aware, however, that it is not always clear how the national interest is determined, and by whom. The Review is also conscious of the fact that what may be in the interests of one sector of the nation is not necessarily in the interests of another sector.

The Review considers that, where the national interest is a factor in developing or applying shipping policies, the process by which the national interest is determined should be transparent and that those affected should have adequate opportunity to contribute.

OTHER ISSUES TO BE ADDRESSED INDIVIDUALLY

Personal tax treatment issues.

113. Historically, Australian crewed vessels have had an operating cost differential of between AUD 2 to 2.5 million/annum/vessel, when compared with vessels manned by international crews. There are two reasons for this: the relatively higher cost of Australian wages and on-costs and the uncompetitive tax regime applied to Australian seafarers operating overseas.

114. Australian seafarers receive a gross wage ranging between AUD 60,000 to 70,000 annually. International crews generally cost less to employ. However, the Review noted that although an Australian integrated rating's wage is higher than an average wage earner's, it can be less than that paid to others in the transport industry. For example a B-Double driver operating on the Melbourne to Sydney route can earn between AUD 90,000 to 120,000 annually.

115. International seafarers operating in international trades under the applicable law of the country in which their contract of employment is established pay the relevant income tax applicable in that country. That rate of personal income tax is generally significantly less than that applicable under Australian tax legislation and is less than that applicable to Australian seafarers. Consequently international seafarers, while receiving comparable take home pay as their Australian counterparts, cost less to employ due to the lower tax rates applicable.

116. The existing requirement for Australian resident taxpayers who are seafarers to pay domestic rates of tax on income earned overseas makes them uncompetitive against seafarers from other high quality nationalities. For example, a British seafarer working a minimum of 181 days a year in international vessels pays no personal income tax. Other OECD nations such as France, Germany, Netherlands, Denmark, Norway and countries such as Singapore, Korea and others in the region have similar concessionary personal income tax arrangements for their seafarers. Therefore these seafarers cost less to employ than Australians.

117. Australian tax law provides the opportunity for concessionary tax arrangements for Australian residents earning their income overseas, through Section 23 AG of the *Income Tax Assessment Act 1936*. The intention of s.23AG is to ensure that Australian nationals are not disadvantaged compared to other countries nationals by allowing them to compete and permits them to pay tax under the relevant country's tax law through double taxation agreements. Australian seafarers who earn their income overseas are denied access to these concessionary tax arrangements making them uncompetitive in international trades, unlike other Australian workers who earn their income in a similar manner, but not on the high seas.

118. An Australian who is a ship's officer might earn a gross wage of, say, \$120,000. His or her net pay in Australia would be about \$80,000. If the officer were to be engaged on a contract outside Australia and worked in such a way that the

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requirements of S 23AG were met, the officer might need to be paid, say, \$90,000 to give rise to a net pay of \$80,000.

119. It is important to note that the officer would have to pay personal income tax in the country in which he is employed at the applicable rate under that country's income tax law. It is not the case that the officer would pay no tax, although under the United Kingdom taxation law, for example, seafarers pay tax at the rate of zero providing they are outside the UK for 183 days or more in the tax year.

120. Under the current Australian taxation arrangement applicable to that officer he or she would have to be paid \$120,000 or 50% more than an equivalent, say, UK officer who under UK law, pays no income tax. This makes Australians uncompetitively priced and job opportunities are thus not available to them.

Conclusion IV: The Review heard very strong evidence that the inconsistent interpretation in Australia of the concept of employment in a foreign country discriminated against Australians in finding employment in international seafaring trades. Therefore, Section 23AG of the *Income Tax Assessment Act 1936* needs to be reviewed to ensure consistent interpretation of the concept of employment in a foreign country.

The Review also considered Section 23AF of the *Income Tax Assessment Act 1936* and found similar concessions available for consultants and contractors working overseas, and considers that these principles should be tested to see if they apply to Australian seafarers. The Minister for Trade, responsible for the granting of these concessions under 23AF, should consider a proposal for an international vessel to be deemed to be a project for the purposes of this section of the *Income Tax Assessment Act 1936*.

Flexibility of crew numbers/skills.

121. One of the features of earlier reforms of the industry was the principle that a benefit could only be accessed if the number of crew members engaged in a vessel conformed to a predetermined level. The Review heard from a number of participants that, in many cases, Australian crew numbers had dropped below a level which enabled required maintenance to be carried out on board. Some companies expressed the view that they could see justification in additional crew members to carry out on board maintenance, either as permanent members of the crew or on a 'flying squad' basis, rotating between the company's ships. However, these additional crew members would not necessarily be carrying out the kind of work for which full IR qualifications and remuneration are required, or would need skills different from those usually possessed by IR's.

122. The Review notes that there is nothing in the *Navigation Act 1912* or Marine Orders to prevent the employment of ancillary staff on board ship, providing that they do not carry out duties for which full marine qualifications are required under international conventions and for which they are not qualified. The Review suggests

that the industry consider a more flexible approach to the make up of the complement of ships where that would lead to a more efficient operation.

Conclusion V: The Review heard evidence that some operators had difficulty in getting maintenance done on-board at a reasonable cost. Others had observed that in some situations shore-based maintenance could be more costly. It was suggested to the Review that consideration could be given to the possibility of a wider range of occupations being represented in crews in some circumstances; fully trained integrated ratings may not be required for all tasks on board ship. The Review sees merit in employees and employers discussing the possibility of a more flexible range of occupations and skill levels on board ship.

Mixed manning.

123. One of the issues being addressed by the industry is the competitive cost disadvantage of Australian crews in international trade. The personal taxation issue is dealt with elsewhere in the report, but allied to this is the issue of the composition of crews.

124. It is a fact of life that Australian integrated ratings will seldom be cost competitive with ratings from developing nations. However, it is possible that Australian officers and engineers could compete effectively, particularly if the taxation issue is resolved satisfactorily. There would seem to be opportunities for Australian officers to participate in a greater share of overseas trade than is currently the case by participating in mixed crewing arrangements. The Review sees opportunities not only for existing officers but for high quality ratings who choose to train for careers as officers.

125. The Review is aware of discussions between employers and employees to develop the concept and sees it as a positive initiative to improve seagoing employment prospects and careers in future.

Conclusion VI: For the purposes of equity and jobs growth, it is necessary to ensure that the circumstances of Australian resident taxpayers in international trading vessels are no different under the *Income Tax Assessment Act 1936* from other Australians employed in a foreign country. In that context, the Review notes that some participants have agreed that for the development of Australian seafarers' and Australian shipping interests' participation in international trading there are opportunities to crew vessels in new trades with a combination of Australian seafarers and foreign seafarers.

For example, some vessels may be fully Australian manned while others may be mixed-manned with the level of Australian participation being dependant upon the viability of the trade, the nature of the ship and the applicable legislation including the taxation position. Some vessels may be subject to special pre-existing agreements as to their Australian manning and such vessels would remain subject to those agreements.

This will create training, job and career opportunities for Australians in an expanded presence in international trades, including Australian ratings who may choose to further train as officers. The skills base of qualified Australians in the maritime and related industries will be enhanced as a result.

Ship registration.

126. The concept of ship registration (ie 'flag') is a key issue in world shipping. The nation in which a ship is registered (ie whose flag it flies) may influence some or all of the regulatory regime under which the vessel operates, the taxation treatment of earnings of the vessel, the locality of the management of the vessel, the availability of finance for the vessel and the favourability of finance, the nationality of the crew and their terms and conditions of employment. The key determinants in choice of flag are the ability to operate the vessel in an internationally competitive manner and a reputable flag-state administration. Registration in Australia satisfies the second criterion but not the first.

127. The Review notes that amendment of the *Shipping Registration Act 1981* would be necessary for Australians to take full advantage of some of the initiatives currently under discussion. Section 12 of the Act requires that all wholly or majority Australian-owned commercial vessels over 24 metres in length must be entered in the Australian Register of Ships. This approach to registration could be said to reflect the practices and principles of a world that has now passed. It is largely based on the historical practices of European maritime powers, that sought to ensure a close economic and operational connection between the ship and the country of its registration. This connection is no longer the norm in international shipping, and other nations have adapted to those changed realities.

128. Under the current Government approach to the shipping industry, Australia is an unattractive registration location and access by Australian operators to more attractive foreign registries should not be proscribed by Australian legislation. This view is not unanimously supported by all stakeholders in the industry, but is certainly the view of the overwhelming majority.

129. The Review is aware that the *Shipping Registration Act 1981* was reviewed in 1997 and that the above problem was dealt with in that review. One key recommendation was that compulsory registration in Australia should be discontinued. That review's recommendations are, however, still awaiting action by Government.

Conclusion VII: Although not unanimously supported by stakeholders, the Review urges that the recommendations of the review of the *Shipping Registration Act 1981*, particularly with regard to Section 12 of the Act be implemented as soon as possible.

National security.

130. International shipping is arguably the weakest link in our national security system. Foreign vessels from all over the world enter Australian waters daily. On board are both people and cargoes that represent a potential risk to Australians.

131. Following the events of 11 September 2001, that risk has heightened. New security measures are required to improve our border protection.

132. On 1 July 2004, the International Ship and Port Facility (ISPS) Code comes into effect. The ISPS Code is a largely pragmatic document, focussing on such day-to-day activities as:

- ensuring the performance of all ship security duties;
- controlling access to the ship;
- controlling the embarkation of the persons and their effects;
- monitoring restricted areas to ensure that only authorized persons have access;
- monitoring of deck areas and areas surrounding the ship;
- supervising the handling of cargo and ship's stores; and
- ensuring that security communication is readily available.

133. These are activities that any operator that has effectively implemented a safety culture in accordance with the International Safety Management (ISM) Code would be undertaking already. In many respects therefore, the requirements of the ISPS Code could already be taken to be satisfied by effective operators. However, the ISPS Code may require quite a considerable consolidation of security-related contingency and avoidance planning procedures and documentation.

134. The subject of seafarer identification is critical to the ultimate effectiveness of the ISPS Code. Presently seafarers carry a seafarer's identity document. This document, which usually carries no photograph, will be upgraded in July next year to a seafarers passport as part of an international initiative to improve shipping security. Australia has acted separately to upgrade, in the short term, to a requirement that all seafarers entering Australia carry a passport. This measure will come into force in November 2003.

135. Before a ship enters our territory the ship manager or master is required to furnish the Department of Immigration and Multicultural & Indigenous Affairs (DIMIA) with a list of the names of the crew. This is then checked against an alert list to

identify any high risk individuals. If the check results in no alerts then an electronic special purpose visa is automatically issued for the crew. When the ship arrives in port it may be inspected by an officer of the Australian Customs Service (ACS). ACS officers undertake inspections on ships depending on a risk assessment made of that vessel. The Review understands that an inspection is undertaken in the majority of arrivals, but not in every case.

136. International vessels can remain in Australia and carry out domestic transport services along the coastline if they receive a single voyage permit (SVP) under Part VI of the *Navigation Act 1912*. Additionally, international vessels can remain in Australia for periods of up to three months upon the receipt of a continuous voyage permit (CVP). The number of these permits issued has increased over the last decade. In 2001-02, 751 were issued to foreign vessels, an increase of 270% over the period. The freight carried under permits increased by 782% during the same decade.

137. The Department of Transport and Regional Services (DOTARS) issues the permits to the foreign vessel to operate as part of Australia's domestic transport industry. DIMIA issues visas based on the production of a permit issued by DOTARS and ACS acts as agent for DIMIA for the purposes of physical inspection of the vessel.

138. The weakness of this system is that it depends on the crew listing being accurate. If for whatever reason the names on the crew list are not the real names of the crew and the fake names do not trigger an alert when reconciled with the alert list then they are automatically taken to hold a Special Purpose Visa. Assuming that customs officers inspect the foreign vessel when it enters the country, and assuming they also inspect the crew, it is very difficult for the officers to be sure that the people on the list are the people on the vessel. Additionally, once the initial inspection of the ship is complete, crew are free to go ashore whenever they like. If they do not return, the system relies upon the ship's master to alert the authorities of the missing crew.

139. The increased frequency of SVP's and CVP's increases the security risk associated with foreign ships. Cargo on foreign vessels is another risk area that requires more scrutiny. The Commonwealth has invested in new X-Ray equipment at ports to inspect containers as they move across the port. A small number of containers are inspected on a risk assessment basis each day. For example about 100 forty-foot containers are inspected in Sydney each day. Sydney has a throughput of approximately one million containers per annum. The cost of this is borne by the industry.

140. The Review was presented with very strong evidence that there is a conflict between the Governments objectives of obtaining the lowest cost transport services while at the same time strengthening our border protection. Seeking the lowest cost transport services inevitably leads to the increased use of low cost/low quality foreign shipping with foreign crews, which in turn has the potential to weaken Australia's border protection measures.

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141. Other nations—and in particular the United States, our second largest trading partner—are limiting access to their coastline in response to the need to strengthen their border protection. The US has commenced to restrict access to ships that are assessed as coming from high risk nations or manned crew from high-risk nations. Australia is exposed to the very serious risk of having our access to the US market cut off or reduced because of our dependence on lowest cost foreign shipping with foreign crew, which could be assessed as high risk by US authorities. Undoubtedly if Australia had a larger international shipping fleet our access to the US would be assured.

Conclusion VIII: The Review notes the apparent inconsistency between the Government's policy for coastal shipping, i.e. to obtain the cheapest priced shipping services by accessing foreign ships, and its policy of strengthening border protection.

The Review notes measures to be undertaken by the US Government to limit access to its coastline to those vessels and crew from nations regarded as having a high degree of security. The Review received evidence that Australia risks losing access to US markets due to the use of foreign flagged vessels and crews that do not have the high degree of security required under their strengthened border protection regime.

Evidence was provided confirming that increased security would result in increased costs that will be borne by the shipping task. Australia faces the challenge of remaining competitive, as some competitor's governments will meet all or a portion of the increased security costs. Therefore any new measures would need to be pursued within competitive bounds.

Customs Act.

142. The Review heard evidence that the Australian Customs Service had on occasions treated certain items of ships' equipment differently to customs authorities in other countries, with the result that Australian operators were being required to pay duty on items that their competitors were not. The treatment of mooring ropes was cited as an example.

143. While not in itself constituting a major cost disadvantage, such barriers to competition all add up and are certainly not helpful to securing the future of the industry.

Conclusion IX: The Review heard evidence of differences between Australia and countries in competition for shipping business in their treatment of some items for customs purposes. The Review again draws the attention of Government for the need to remove barriers to competition by Australians.

Training.

144. The Review heard evidence that the decline in the Australian flag fleet has brought training for the international and domestic fleets to a virtual stop. The termination of the traditional system of training cadets had ended some years ago whilst training of integrated ratings had reduced to a trickle. It was advised that there were young Australians seeking careers at sea. However there were few opportunities available under existing policy and industry conditions.

145. Australian maritime credentials were highly regarded internationally, which reflected the quality and consistency of Australia's maritime training institutions which were mainly regionally based.

146. The Review heard repeatedly that there was an essential need for Australia to retain a strong maritime skills base and that there was already evidence of shortages of seafarer skills. There were clear career paths that led from shore training to sea service then back to shore based employment usually professional employment. The skills and knowledge acquired in sea service in the Australian shipping industry enabled seafarers at a later stage to move onto shore based professional employment in trade and commerce, government or in the maritime related service sector.

147. It is noticeable that the attraction of employment for Australian seafarers alleged in some quarters has not resulted in an oversupply of qualified seafarers. As Captain Ross of the AMOU succinctly put it: "seagoing has unfortunately become an unattractive option as a long term career".

148. Whilst some would-be seafarers undertake training on their own initiative, there was at the time of writing a continuing shortage of qualified Australian seafarers in the shipping industry in Australia.

149. While the Review was told that there were no industry wide initiatives or training schemes today such as had been funded in the 1980's and early 1990's there were some operators who were investing in training. Other companies simply poached the officers and engineers they wanted. The scarcity arising from the contraction in training and aging out of existing personnel was already resulting in a bidding up of the rates paid officers and engineers.

150. The Review is aware of estimates of a global shortfall currently of 16,000 competent officers and engineers and projections that this will rise to 46,000 by year 2010.

151. Elsewhere in this blueprint reference is made to the existing international demand for Australian officers and engineers. Removal of the tax impediments to more Australian taking up such employment would generate the need for additional training places at Australia's maritime training institutes and create new export services income.

152. The Review heard that changes to visa arrangements for overseas students had had the effect of sharply reducing the intake of foreign students at Australia's maritime training institutes causing a serious loss of export income. It heard also that overseas maritime students had a very high completion and departure rate. It appeared that this issue might be addressed shortly by the Government.

153. The Review was advised of overlap and friction between State based and STCW based marine qualifications suggesting that national uniformity should become the priority under the banner of single Commonwealth/State Authority.

Conclusion X: The Review heard evidence of the need for skilled seafarers for a wide range of occupations in the industry. The Review also heard evidence of the need for an industry forum, such as the National Maritime Industry Training Council (NMITC), to progress and enhance career paths and competencies. In this context, concern was expressed that existing Federal Government funding could be more effectively channelled.

Seafarers' compensation.

154. Seafarers employed on vessels engaged in intra-state, inter-state or international trades or commerce and which fall within Part 2 of the *Navigation Act 1912* are covered by the *Seafarer's Rehabilitation & Compensation Act 1992* and the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI)Act). These acts are administered by the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority).

155. The *Seafarer's Rehabilitation & Compensation Act 1992* is based on the *Safety, Rehabilitation and Compensation Act 1988*, which covers Commonwealth public servants current. These arrangements for compensation are unique in private sector employment. No other private sector employer is required to place their workplace under a federal scheme; other transport businesses in Australia cover their workers' compensation through the normal state based schemes.

156. A review of the *Seafarer's Rehabilitation & Compensation Act 1992* was instigated by the Minister for Workplace Relations, Tony Abbott in 2002. The scope of the review has allowed employers to raise their concerns with Government and the blue water and offshore sectors have combined to prepare an exhaustive submission. It is understood the maritime unions are also making submissions to the review of the *Seafarer's Rehabilitation & Compensation Act 1992*.

157. The nature of the existing legislation has created an environment in which potential liabilities, which can be incurred under the Seafarers Act, are such that seafarers' rehabilitation and compensation is becoming an uninsurable risk. Because of the open ended nature of the benefits, insurers are reluctant to service the seafarer requirements of the shipping industry. Certainly it is almost impossible to get coverage from the P & I Clubs, or if available it is extremely expensive.

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Currently, the Productivity Commission is undertaking a review of the legislation and is expected to report in March 2004.

158. The increasing cost of premiums has caused industry to restructure policies so as to reduce premiums and increase the level of deductibles. This results in employers self-insuring a significant component of the risk. Consequently, optimum outcomes for seafarers and employers are not being achieved.

159. When the *Seafarer's Rehabilitation & Compensation Act 1992* was passed, seafarers were employed either directly by individual employers - as in the case of officers - or by the industry in the case of ratings. Consequently, ratings did not technically have an employer; hence the need for someone to provide coverage for compensation matters. The Commonwealth stepped in, as the nature of seafaring meant that seafarers were constantly crossing state and national borders.

160. Since 1998 all employees have been engaged directly by individual employers. The only employees now covered by the "Safety Net Fund",⁸ provided for in the *Seafarer's Rehabilitation & Compensation Act 1992*, are those with employers whose liability can be established but which are no longer in existence. Since company employment, seafarers no longer attend engagement centres and there are no industry trainees. Therefore, industry coverage for these categories is no longer required.

161. One function of the SeaCare Authority is to collect lost time and claims data from the maritime sector for compilation into national data collected by state and federal compensation authorities. The data for the maritime sector can then be compared with data from other sectors.

162. The data issued by the Seacare Authority suggests that claims by the maritime sector are comparatively very high. Employers' figures, however, indicate much lower injury rates. The industry believes that this apparently poor compensation record is taken as an indicator of industry performance and is obviously unhelpful.

Conclusion XI: The Review strongly urges the participants to investigate alternative forms of coverage under the existing Seafarers Act that reduces the cost of providing comparable cover.

The participants are also urged to rectify negative perception of the performance of the industry.

Tonnage tax.

163. A number of countries with comparable economies to Australia have, over the last few years, sought to revitalise their shipping industries by introducing a company

⁸ There are currently about 300 former seafarers covered by the Fund.

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tax system that provides owners more certainty than the traditional profit/loss based systems. Generally called "tonnage taxes", these regimes provide shipowners with an alternative method of calculating taxes—by reference to the tonnage of the ships in the fleet rather than the actual (and usually fluctuating) year-by-year profit. Some schemes (such as the Irish) do not have a special tax rate for shipping, but the normal company tax rate is applied to a notional profit based on tonnage. Some schemes contain tax rates that are different from the normal company tax rate. All schemes allow for tonnage to be used by the company as an alternative to actual profit, and most schemes require companies to lock into the scheme for up to 10 years.

164. The evidence so far seems to demonstrate that countries that have adopted the tonnage method of profit calculation have seen a return of ships to their registers. Whether such a regime would be workable in Australia would depend on a number of factors. The Review believes, however, that sufficient evidence is already forthcoming to warrant a more in-depth study being made in conjunction with Government.

Conclusion XII: The Review considers the introduction of a tonnage-based company tax should be given urgent consideration in Australia as an alternative to traditional company tax. This has led to a revitalised shipping industry in countries that have adopted such a system.

INITIAL STATEMENT BY CO-CHAIRS THE HON PETER MORRIS & THE HON JOHN SHARP

AIRPORT HILTON HOTEL SYDNEY

24th September 2002

Introduction

The Independent Review of Australian Shipping (IRAS) will be co-chaired by the Hon Peter Morris and the Hon. John Sharp, both former Transport Ministers in the Hawke and Howard Governments respectively.

The Australian Shipowners' Association (ASA), with the participation of the most central stakeholders, is sponsoring the Review.

Objective

The Australian shipping industry has experienced considerable change over the last two decades. Despite this, the number of Australian flagged vessels has declined and continues to do so.

Of those vessels currently Australian flagged, many are approaching the end of their economic life.

Consequently, Australian ship owners and operators are faced with major capital expenditure decisions. In these circumstances the industry needs to establish an environment that is conducive to fresh investment in new and replacement tonnage.

Therefore, the stated objective of this Review is to create an environment in which Australian shipping and related services can expand both in coastal and international shipping and to facilitate the requirements of Australian ship operators that would encourage the replacement of aging Australian tonnage with new tonnage.

To achieve this objective it is important to understand from the outset that there is no one solution; rather the solution will come in the form of a broad range of proposals.

IRAS is not about focussing on industrial relations. Industrial change and reform is an ongoing matter for employers and employees' representatives.

The Co-Chairs are prepared to consider any issues affecting the industry, including:

- Fiscal matters
- Taxation
- Legislation and regulation
- Seafarers' compensation

Participants

Shipowners, shippers, unions, those involved in related maritime services and interested parties would be invited to make submissions.

Submissions

Submissions should be preferably be in writing or Email addressed to both Co-Chairs.

They will be accepted also in face-to-face group or individual meetings. Where authorised by the submitters, the submissions will be displayed on the ASA web site. The ASA web site will be amended to accommodate an IRAS web page with an Email address providing automatic distribution to the Co-Chairs.

Method of Achieving Objectives

The Review is being sponsored by the industry; hence your support and cooperation in minimising any delays and costs would be appreciated.

The Co-Chairs aim to achieve consensus on the Review's Report recognising that its recommendations will be subject to consideration by governments and oppositions.

Where issues require examination beyond Australia, appropriate research will be undertaken.

Any or all matters that any stakeholder considers may assist in securing a successful outcome should be raised with the Co-Chairs. This may include thinking both inside and outside the square of conventional wisdom on shipping in Australia.

Stakeholders may wish to meet with the Co-Chairs as a group or individually. Alternatively, individual ship operators and/or shippers may wish to meet with the Co-Chairs and unions to consider initiatives tailored to meet their own requirements.

The Co-Chairs will discuss the draft recommendations with key stakeholders prior to finalisation of the Review.

Program

The inaugural meeting of IRAS will be held in Sydney on 24 September 2002 and it is anticipated that most meetings will be held in Sydney.

The Co-Chairs plan to present their Report in late February 2003.

In company with industry representatives, they will present the Report to Governments and Oppositions. Presentations to other groups and the public would be arranged as required.

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Summary

- Australia is a trade dependent economy that relies on sea transport for more than 90% of its international trade. As such, it constitutes on a tonne/kilometre basis the fifth largest shipping market in the world. It involves shipping and shippers, neither of which is mutually exclusive.
- The distance to our export markets is greater than some of our major competitors and our coastline is one of the longest in the world. This generates a demand for efficiency in our international and domestic sea transport services.
- Shipping within Australia should be so efficient and reliable that a modal shift from land transport can be encouraged in some interstate and intrastate trades. This would have a valuable social, environmental, energy efficiency and resource benefits.
- The availability of seagoing careers should present an option for young Australians. Australia should have an impetus to train young Australians to provide a maritime skills base for the future.
- The role of Australian shipping in a strategic sense—the availability of both a skilled workforce for sea and shore related services, as well as the availability of strategic assets, should be an issue for governments and oppositions.
- For these reasons, and as an industry initiated and funded review that sets out to create a foundation for the development of one of our vital industries, the Co-Chairs seek your active cooperation and goodwill.

Hon Peter Morris

Hon John Sharp

24th September 2002

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Appendix 2

IRAS : WRITTEN SUBMISSIONS

<i>No</i>	<i>Date</i>	<i>Sender</i>
W1.	06.11.02	David Sterrett
W2.	06.11.02	Teekay Shipping
W3.	06.12.02	JG Shipping Services Pty Ltd
W4.	16.12.02	Australian Ship Repairers Group
W5.	16.12.02	Australian Maritime College
W6.	18.12.02	Captain Cook Cruises
W7.	19.12.02	Ron Gross, Eastern Shipping Associates
W8.	12.01.03	Karl Avis
W9.	15.01.03	Michael Alexander
W10.	16.01.03	Neil V Whiteley
W11.	22.01.03	Ian James (Charterparties: withholding tax)
W12.	06.01.03	AMSA (qualifications information)
W13.	28.02.03	Toll Holdings Ltd
W14.	19.03.03	Seafarers Safety, Rehabilitation and Compensation Authority (Seacare)
W15.	21.03.03	Sea Freight Council of Western Australia
W16.	received 14.04.03	Karl Avis (second submission)
W17.		Queensland Government
W18.		Tasmanian Government
W19.		Karl Avis (third submission)

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Appendix 3

IRAS : PERSONS AND ORGANISATIONS INTERVIEWED

<i>No</i>	<i>Date</i>	<i>Person or organisation</i>	<i>No. of persons</i>
H1.	25.11.02	Ron Gross (Eastern Shipping Associates)	1
H2.	26.11.02	Caltex	3
H3.	28.11.02	Maritime Officers' Union	2
H4.	28.11.02	Martin Ferguson	2
H5.	28.11.02	MUA	1
H6.	11.12.02	Patricks	1
H7.	17.12.02	AMSA	2
H8.	17.12.02	Captain Cook Cruises	1
H9.	17.12.02	Stuart Hetherington	1
H10.	17.12.02	AAPMA	2
H11.	18.12.02 08.04.03	P&O Maritime	2
H12.	18.12.02	Teekay Shipping	2
H13.	18.12.02	BHPBilliton	3
H14.	18.12.02	Western Bulk Carriers	3
H15.	18.12.02	AMC	1
H16.	18.12.02 08.04.03	FCL Interstate Transport Services	2
H17.	05.02.03	Toll Holdings Ltd	1
H18.	05.02.03 08.04.03	ASP Ship Management	3
H19.	05.02.03	ANL Containerline	4

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H20.	06.02.03	Stolt-Nielsen Transportation	2
H21.	20.02.03	Dilmun Navigation	3
H22.	20.02.03	Adsteam Marine	4
H23.	08.04.03	Rio Tinto Shipping	2
H24.	08.04.03	Jebsens	1
H25.	04.06.03	Department of Immigration	1
H26.	04.06.03	Department of Finance and Administration	3
H27.	04.06.03	Department of Workplace Relations	4
H28.	04.06.03	Australian Customs	3
H29.	05.06.03	Minister for Transport and Regional Services	2
H30.	05.06.03	Department of Transport	3
H31.	17.06.03	Treasury	3
H32.	17.06.03	Seacare	2

IRAS SEMINAR 18 JUNE 2003

LIST OF PERSONS WHO ATTENDED

The Hon Peter Morris	Co-chair, IRAS
The Hon John Sharp	Co-chair, IRAS
The Hon John Anderson MP	Federal Government
Mr Martin Ferguson MP	Federal Opposition
Mr Chris Alexandrou	Department of Employment and Workplace Relations
Mr Peter Beekman	Stolt-Nielsen Transportation Group
Mr Chris Blower	IRAS
Ms Lynelle Briggs	Department of Transport and Regional Services
Mr Mark Brownell	Western Australian Government
Mr Phil Burns	Australian Customs Service
Mr Martin Byrne	Australasian Institute of Marine and Power Engineers
Mr John Campbell	Teekay Shipping
Ms Flora Carapellucci	Department of Employment and Workplace Relations
Ms Philomena Carnell	Australian Customs Service
Mr Martin Cashel	Department of Finance and Administration
Mr Bill Ellis	Department of Transport and Regional Services
Mr Charlie Gibbons	Department of Transport and Regional Services
Mr Tim Green	Australian Shipowners' Association
Mr Graham Hanna	Department of Immigration
Capt Phil Hickey	Caltex
Mr Andrew Hudson	Australian Customs Service
Mr Neil Kelso	Department of Transport and Regional Services
Mr Dermot Loughnane	Teekay Shipping
Ms Michelle O'Byrne MP	Member for Bass
Mr Robert Osmond	Department of the Treasury
Mr Lachlan Payne	Australian Shipowners' Association
Mr Rod Pickette	Seacare Authority
Mr Bill Robson	Queensland Alumina Ltd

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Capt Fred Ross	Australian Maritime Officers Union
Mr David Sterrett	Australian Shipowners' Association
Mr Andrew Stewart	ANL
Mr Noel Swails	Seacare Authority
Mr Roger Timms	Australian Maritime Safety Authority
Mr Richard Vautier	BHP Billiton
Mr Lance Williams	Patrick Shipping
Mr Jim Wolfe	Department of Transport and Regional Services

CABOTAGE AND THE CUSTOMS ACT

A paper provided to the Review by the Australian Customs Service

Preamble

This paper outlines the Customs position with respect to Cabotage. It presents a simplified version of what is a fairly complex and technical issue.

Introduction

The Australian Customs Service is a regulatory agency that has a number of roles at the Australian border, including community protection and revenue collection. Its primary outcome is effective border management that, with minimal disruption to legitimate trade and travel, prevents illegal movement across the border, raises revenue and provides trade statistics.

As part of that goal, Customs has specific responsibilities for the importation and exportation of goods. Vessels are included in those controls.

Importation of vessels

Under the Customs Act (the Act) the importation of goods and their entry for home consumption are entirely separate but in the vast majority of cases consequential events. There is sometimes a perception that Customs does something to give or confer on a vessel its imported status such as a declaration or some other administrative action. This is not the case.

There is no definition of 'imported' in the Act. Importation is a matter of fact rather than law. Customs case law has established a working definition as follows:

A vessel is imported if it comes from abroad, an act takes place which makes its arrival its destination and the vessel will be remaining in Australia.

When a foreign vessel arrives in Australia to engage in coastal trading, that vessel can usually be said to have been imported. It has come from abroad, an act has taken place which makes its arrival its destination (namely engaging in commerce) and the vessel will be remaining in Australia.

Entry of Vessels

The Act requires that all imported goods, unless specifically exempted, be entered. Entry is the technical term given to the act of communicating details of the goods to Customs. This provides Customs the opportunity to screen the details, examine the goods as necessary, and levy Duties/GST as appropriate. When Customs approves the Entry the charges are paid and the goods are released. The Act also stipulates

that all goods are under Customs control from the time they are imported until they are delivered into home consumption following completion of the entry process.

Customs legislation does not provide any legislative mechanism to force the owner of goods to enter them. It does however provide Customs with a course of action that it may take when goods remain unentered. If goods are not entered by the end of the next working day Customs can cause them to be moved to a secure place and then after a period of time (6 months) we can sell them. In support of the Government's shipping policy and specifically relating to vessels with Permits from DoTaRS, Customs does not require completion of the Entry formalities as the vessel remains a foreign vessel for purposes of the Customs and Navigation Acts.

Deeming a vessel imported

The application of the Customs Act to deem a vessel as imported, is also a provision that is sometimes misunderstood. It was inserted in the 1980's to allow Customs to 'deem' vessels/aircraft to be imported and thus bring them under the control of Customs pending completion of normal Customs formalities. This power was envisaged to be used where the vessel appeared imported but was abandoned or there was no-one readily identifiable as being responsible for it (eg an agent or the owner) and the status of a vessel was unknown. When Customs knows the status of a vessel (for example, a vessel engaged in coastal trade under DoTaRS licence or permit), this provision is not available.

Boarding and Control procedures

Customs control extends to all Australian and foreign vessels on international voyages (when in Australian waters). This control also extends to foreign vessels that are engaged in the carriage of domestic cargo between Australian ports.

All vessels arriving from overseas are required to report to Customs. Based on the information provided a decision is made by Customs to board the vessel for statutory purposes. Customs policy is for all vessels on a maiden voyage to Australia to be boarded at the first port of arrival. For vessels on subsequent voyages, boarding is determined on a risk-assessed basis.

For those vessels issued a DoTaRS permit, Customs controls include port by port clearance and checks of both the vessel and cargo including checks performed on behalf of other Government agencies, such as Immigration (DIMIA), the Australian Maritime Safety Authority (AMSA), Department of Health and Aged Care (DHAC) and Australian Quarantine and Inspection Service (AQIS).

Boarding checks include:

- sighting the Pratique (a document certifying the health of all on board) on DHAC and AQIS,
- crew and passenger checks, including face to passport checks carried out on behalf of DIMIA,

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- Vessel Certificate checks on behalf of AMSA,
- where there is no Port Quarantine Officer those functions normally carried out by the Port Quarantine Officer in relation to animals, and
- Customs compliance checks in relation to crew possessions and vessel stores.

In most instances these checks, including boarding, are carried out on a risk-assessed basis. Border activity may be carried out at first and subsequent ports and may include stowaway, Intelligence, rummage and concentrated search and / or compliance activities.

Customs procedures are dependent on whether the vessel:

- is on an international voyage and is carrying domestic cargo in addition to international cargo; or
- has disconnected from its international voyage to undertake only coastal trade.

Vessels carrying domestic cargo

The Customs Act requires that cargo, including domestic cargo, be reported. Clearance procedures differ if the domestic cargo is carried on an international voyage or a domestic voyage.

If domestic cargo is carried on a vessel on an international voyage the responsible agent is required to present to the Customs Clearing Clerk the DoTaRS permit along with the domestic cargo manifest in order to obtain port clearance from Customs.

As domestic cargo is not being exported from Australia it does not require an export entry. An exemption code is quoted on the outwards manifest or submanifest when reported to Customs.

The responsible agent is required to present the DoTaRS permit and the manifest to Customs at the subsequent port to obtain permissions to discharge the cargo. The permit and Customs clearance are then attached to the vessel's papers.

Customs enters the details of the permit onto the vessel's documents and enters the same details into a Customs electronic database. The vessel status in Customs terms remains as 'international'. Customs treatment of the vessel (eg in relation to bunkers and vessel stores) is the same as if it were not carrying domestic cargo.

If domestic cargo is carried on a vessel on a domestic voyage the cargo is reported to Customs as described above, however Customs treatment of bunkers and vessel stores changes.

When the responsible agent notifies Customs of long term disconnection from an international voyage, duty and GST are payable for all bunkers on board and the

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vessel no longer has access to duty-free stores. The vessel may either pay duty on the stores on board or the stores are sealed ('bond') and are made available only when the vessel resumes its international status.

The bond is secured and sealed with a Customs seal following a physical check by Customs to ensure declared quantities match actual quantities. Details of the seal number are added to the vessel's papers and recorded in the Customs electronic database. The vessel status in Customs terms is changed to 'domestic'.

Customs may conduct checks at subsequent ports to ensure the integrity of the bond. Should stores be unaccounted for at any time during the voyage the vessel is required to pay duty on the shortfall.

Boarding checks at subsequent ports may include:

- crew sign-offs and sign-ons carried out on behalf of DIMIA,
- certificate checks relating to expired certificates on behalf of AMSA,
- Customs compliance checks in relation to crew possessions and vessel stores.

13 June 2003

OPERATION OF THE SPECIAL PURPOSE VISA MECHANISM IN RELATION TO SHIPPING.

A paper provided to the Review by the Department of Immigration and Multicultural and Indigenous Affairs

Legislative framework

Section 33 of the Migration Act deals with Special Purpose Visas (SPV's). It provides at sub-section 2(a) for SPV's to be "taken to have been granted" to classes of persons listed at Migration Regulation 2.40, and at sub-section 2(b) for grant of SPV's to other persons or groups as specified in writing by the Minister.

A SPV granted under subsection (2)(a) is granted at the beginning of the day that the person commences to have the prescribed status; one granted under (2) (b) applies from the beginning of the day that the declaration by the Minister is made. The declaration takes the form of a Ministerial Instrument.

Once "taken to have been granted", a SPV remains in effect until the end of the day on which the person ceases to be a member of the class of persons, or the SPV is ceased. Section 33(9) provides that a written declaration can be made to the effect that it is undesirable for a SPV holder to enter Australia. Section 33(5) provides that such a declaration has the effect of ceasing a SPV.

Division 2.8 of the Migration Regulations deals with SPV's and the first section under 2.8 is Regulation 2.40, which lists the groups of persons that derive their SPV status from Section 33(2)(a) of the Migration Act.

Listed under Regulation 2.40(1) are (amongst others) three groups of persons involved in commercial shipping. These are:

- (k) members of the crew of non-military ships (other than ships being imported into Australia);
- (kaa) spouses and dependent children of members of the crew of non-military ships (other than ships being imported into Australia);
- (ka) members of the crew of ships being imported into Australia.

Definitions of "members of the crew" and "non-military ships" are contained in regulation 1.03.

Coastal Trading

Different provisions apply to crew of ships depending on whether they are imported or not imported and these are enunciated at Reg 2.40(6) and 2.40(8). "Imported" is not defined in the Regulations.

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The relevant provisions of the Migration Regulations that impact on foreign crews in coastal trading are:

- Regulation 2.40(6)(b), which deals with crew of non-imported ships, and states that the crew of non-military ships are taken to hold SPVs if they are on a vessel that “will depart Australia to a place outside Australia during the course of the voyage”; and
- Regulation 2.40(8)(b), which deals with the crew of imported ships, and indicates that a crew member holding a SPV has this status for five working days after the ship on which they have entered the country has been imported.

Therefore, to retain SPV status for the crew, a ship must not be imported and must depart Australia to a place outside Australia during the course of a voyage.

There is some ambiguity about the concept of a voyage and as a result it had been difficult to give clear advice to shipping companies operating in coastal trading.

The Minister for Immigration Multicultural and Indigenous Affairs decided to provide clarity to the coastal shipping industry, by using the provisions in Section 33(2)(b) of the Migration Act to sign an Instrument to provide visa coverage to foreign crew operating in coastal trading under specific conditions. The Instrument was signed on 20 December and allows foreign crew to remain on a Special Purpose Visa, providing the vessel they are on has a DOTARS permit, and provided that the vessel leaves Australia at least every 3 months. SPV's granted under section 33(2)(b) remain in effect alongside, or co-exist with, SPV's granted under 33(2)(a).

Immigration clearance

The Australian Customs Service manages Australia's sea border on behalf of DIMIA. It operates an extensive network of staff around the country who conduct checks on incoming crew of foreign vessels

At least 48 hours before arriving in Australia crew lists are transmitted to ACS, which undertakes alert checking using DIMIA's Movement Alert List. If a crewmember is recorded on an alert list their SPV can be ceased under section 33(9) and as a result the crewmember may be confined on board the ship while it is in Australian waters.

LEGISLATION – DETAIL

S33. There is a class of temporary visas to travel to, enter and remain in Australia, to be known as special purpose visas.

(2) Subject to subsection (3), a non-citizen is taken to have been granted a special purpose visa if:

(a) the non-citizen:

(i) has a prescribed status; or

(ii) is a member of a class of persons that has a prescribed status;

or

(b) the Minister declares, in writing, that:

(i) the non-citizen is taken to have been granted a special purpose visa; or

(ii) persons of a class, of which the non-citizen is a member, are taken to have been granted special purpose visas.

=====

Regulation 2.40. Persons having a prescribed status - special purpose visas (Act, s.33(2)(a))

[Persons who hold prescribed status]

2.40. (1) For the purposes of paragraph 33 (2) (a) of the Act (which deals with persons who are taken to have been granted special purpose visas), and subject to this regulation, each non-citizen who is included in one of the following classes of person has a prescribed status:

- (a) members of the Royal Family;
- (b) members of the Royal party;
- (c) guests of Government;
- (d) SOFA forces members;
- (e) SOFA forces civilian component members;

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- (f) Asia-Pacific forces members;
- (g) Commonwealth forces members;
- (h) foreign armed forces dependants;
- (j) foreign naval forces members;
- (k) members of the crew of non-military ships (other than ships being imported into Australia);
- (kaa) spouses and dependent children of members of the crew of non-military ships (other than ships being imported into Australia);
- (ka) members of the crew of ships being imported into Australia;
- (l) airline positioning crew members;
- (m) airline crew members;
- (n) transit passengers who belong to a class of persons specified in a Gazette Notice for the purposes of this paragraph;
- (p) persons visiting Macquarie Island;
- (q) children born in Australia:
 - (i) of a mother who at the time of the birth holds a special purpose visa, if only the mother is in Australia at that time; or
 - (ii) to parents both of whom, at the time of the birth, hold special purpose visas, if at that time both parents are in Australia;
- (t) Indonesian traditional fishermen visiting the Territory of Ashmore and Cartier Islands.

=====

The terms used in paragraphs (1) (a) to (n) are defined in regulation 1.03.

[Crew on visiting non-military ships]

- (6) A person included in a class of persons specified in paragraph (1) (k) has a prescribed status if and only if the ship of whose crew he or she is a member:

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- (a) enters Australia at:
 - (i) a proclaimed port; or
 - (ii) a port other than a proclaimed port, if permission for it to do so has been given in advance by the Australian Customs Service under section 58 of the Customs Act 1901; and
- (b) will depart Australia to a place outside Australia during the course of the voyage.

[Crew members of imported ships]

- (8) A person included in a class of persons specified in paragraph (1) (ka) has a prescribed status:
- (a) if and only if the ship of whose crew he or she is a member enters Australia at:
 - (i) a proclaimed port; or
 - (ii) a port other than a proclaimed port, if permission for it to do so has been given in advance by the Australian Customs Service under section 58 of the Customs Act 1901; and
 - (b) for 5 working days after an agreement is made between the person and the ship's master under section 46 of the Navigation Act 1912.

ADDENDUM THE CSL PACIFIC CASE

Note by the Co-chairs

1. While the Review was in progress, we were aware of action being taken in the Australian Industrial Relations Commission (AIRC) and the High Court relating to crewing of the *CSL Pacific*.
2. Although it was agreed at the first meeting of IRAS that the purpose of the Review did not include renegotiation of specific conditions of employment—this is the function of well-established industrial forums within the industry—we consider that the case raises important issues that were also canvassed with us during the Review and warrants comment in the context of the IRAS proposals.
3. We are aware that the matter has not yet been finalised. For this reason, we do not consider it appropriate to seek from the industry participants any kind of “IRAS consensus” on the issues raised.

BACKGROUND

4. The former ANL ship *River Torrens* operated on the Australian coast under licence issued pursuant to s.288 of the *Navigation Act 1912*. One of the conditions attaching to a licence is that the crew are to be paid Australian award rates.
5. The ship was sold to CSL Australia Pty Ltd in May 1999. It continued to operate on the Australian coast, under licence and with its Australian crew. In July 2000, it was transferred to CSL Pacific Shipping Inc., renamed the *CSL Pacific* and reflagged in the Bahamas. The employment of its Australian crew was terminated and it was re-crewed with Ukrainian nationals.
6. While initially operating outside Australia, it returned to the Australian coast in October 2001. Since then, it has been operating almost exclusively on the coast. However, it has been doing so under permits issued pursuant to s.286 of the *Navigation Act 1912*. One result of this is that the condition referred to in paragraph 4 above ceased to apply to the ship.
7. The three maritime unions applied to the AIRC to have CSL Pacific added as a respondent to the Maritime Industry Seagoing Award.
8. The Full Bench of the AIRC decided:
 - an “industrial issue” existed, even though it did not directly involve members of the Australian unions
 - observing that the *CSL Pacific* is “...a serial participant in what a person in the street might otherwise conceive to be the Australian coasting trade, were the voyaging and service not deemed to be

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otherwise because it is covered as an exception to the special licensing regime by the permit...”

- it is within the AIRC’s jurisdiction to hear and determine that industrial issue.
- provisionally, that the award should be varied, but that the merits of the application should be heard by Commissioner Raffaelli.

9. CSL Pacific sought to have the High Court determine that the AIRC had erroneously assumed jurisdiction. The High Court declined to do so. One important finding by the High Court was that, although the issue of a permit under the Navigation Act removes the obligation for crews to be paid award wages as a condition of a licence, it does not result in the Workplace Relations Act having no application in its own right.

10. Before Commissioner Raffaelli could consider the merits of the unions’ application to have CSL Pacific added to the respondents to the Award, CSL asked the AIRC to refrain from further hearing the matter. The Commissioner:

- did not consider that the application of international law and custom in the CSL circumstances justify terminating proceedings.
- said that no inference should be drawn that the Parliament did not intend the application of Australian labour laws to foreign vessels.

Equally however, he drew no inference that the restrictions placed on the regulation of foreign airlines but not on foreign ships indicates an intention that such ships should have Australian labour laws applied to them.

- did not consider that the Commission should view Government policy as anything more than a desire to provide an efficient transport means for the Australian community. Australian Government policy does not provide a basis for the Commission to cease dealing with the industrial issues before it.
- considered that the considerations raised as to the adverse conditions now pertaining under the Award is premature.

They suggest a form of regulation more in line with accepted standards and the exigencies of the industries concerned, considerations that ought to be dealt with at a later time.

- CSL’s existing arrangements with its employees militates in favour of the Commission declining to proceed further.
- considered that applying the Award would probably have the effect of
 - discouraging productivity; and
 - imposing an Award which is “...unsuited to the efficient performance of work according to the needs of the workplace or enterprise”.

11. However, the Commissioner decided that many of what he found to be substantial matters of concern to CSL Pacific would seem capable of being

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addressed by a more appropriate form of award prescription. He therefore rejected CSL's application that he should refrain from dealing with the matter further.

12. He also declined to vary the Award by adding CSL, although he had not heard full evidence from the parties on that aspect. Nevertheless, he sent a clear message that he would not add CSL Pacific to the current Award, but would consider a different form of award.

COMMENT

13. We are concerned that the current Award is perceived as "discouraging productivity" and "unsuited to the efficient performance of work according to the needs of the workplace or enterprise".

14. The opportunities identified during the IRAS process depend very heavily on the Australian seafarer becoming more competitive and a more even-handed regulation of shipping by government. If the challenges of the Commissioner's words are not met, neither will happen and the opportunities will be illusory.

15. The Commissioner lists five matters which led him to the conclusion that the current Award is inefficient and discourages productivity. They are:

- Australian crews are unwilling to undertake routine ship maintenance;
- the crew "swing" is at odds with international standards;
- there is a refusal by Australian crews to "dig out" as part of their routine duties without additional payments;
- leave accrues at a rate of 0.926 of a day for each day served at sea, approximating six months leave in every twelve months;
- there is no monetary incentive to work overtime and thus is resisted.

16. All these matters were raised with us during the Review. The first three are more matters of management than of deficiencies of the Award. We spoke with a number of operators who encountered little or no problem from their crews carrying out routine maintenance and digging-out. We are aware, too, that the formal position of the union leadership is that these tasks are part of a seafarer's duties and should not be seen as a problem. We concluded that, where a problem exists, it needs to be addressed by management, assisted where necessary by an improved communication effort within the union. That said, however, if it is true that the Award does promote inefficiencies, it is clearly deficient and needs to be addressed.

17. The problem of overtime will always occur in a work environment where wages and allowances have been aggregated. Ensuring that the full range of agreed duties are carried out requires a focussed management effort.

18. The problem of leave identified by the Commissioner is, however, a more difficult one. If there was one issue on which all operators agreed during discussions with us, it was that the leave provisions in the current Award are considerably out of step with competitors, including those in developed countries.

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19. The principles and precepts incorporated in the Award were regarded as innovative and progressive when it was developed in 1973. In the 30 years since it was introduced, it has underpinned industrial regulation of the industry.

20. The Award is a product of the 1970s industrial circumstances. The industry has changed dramatically since 1973 by, for example:

- the introduction of the concept of integrated ratings;
- the disappearance of some specialised occupations, e.g radio officers;
- crew numbers having more than halved;
- the advent of international competition in domestic trades;
- the globalisation of both the financial and operational aspects of the industry;
- changing community standards and expectations;
- the introduction of Enterprise Agreements;
- much more emphasis on the needs of the customer.

21. The circumstances of 2003 are very different. Notwithstanding that the Award was subjected to the Award simplification process within the AIRC, we believe that it is essential for the industry to reassess the suitability of the Award and its component parts.