

Contents

- 1. Restoration of a balanced system of cabotage**
- 2. Fiscal support to encourage investment in Australian ships and to support workforce development**
- 3. An agreed approach to a proposal that revitalises the use of Australian flagged international ships**
- 4. Enhanced Workforce Development Arrangements**
- 5. An industry and innovation package to nurture investment and start-up in the initial years**

Introduction

This document sets out the key elements of Maritime Union of Australia (MUA) proposals for a comprehensive reform of Australian shipping policy. These policy proposals have been developed by the union following widespread consultation with the industry, the union's membership, consultants and subject matter experts and has drawn heavily on international experience to ensure the policy proposals follow globally accepted principles and practices.

The policy proposals, in fully developed form, have been put to the Commonwealth Government as part of the policy development process in response to the Recommendations in the Parliamentary Report entitled Rebuilding Australia's Coastal Shipping Industry.

We hope you find the policy proposals useful in understanding, and in advocating, the actions that are required to revitalise Australian shipping.

1. Restoration of a balanced system of cabotage

(The policy of giving preference for Australian ships employing Australian crews for carriage of Australian coastal cargo)

THE POLICY OBJECTIVE: The principal policy objective is to rehabilitate the Australian flag under a competitive shipping model that is built around the primacy of licensed ships for the carriage of Australian coastal cargo. Under such a model, voyage permits are still permissible, but as a discretionary mechanism: (i) to facilitate continuity of trade; (ii) to build capacity; and (iii) to meet contingency needs where there is insufficient volume or irregular volume for a commitment to new tonnage or where some other unforeseen short term contingency arises requiring movement of coastal cargo.

THE POLICY PROBLEM: The continuing opportunistic use of coasting trade permits where the crews of foreign ships attract substandard rates of pay while operating in the Australian domestic freight market is anathema to developing strong, reliable, service oriented supply chains in the Australian freight transport industry.

THE POLICY SOLUTION: To create new ship licensing and ship registration provisions that create a seamless hierarchy of regulation to provide for: (i) Australian registered (flagged) and crewed ships primarily operating in the domestic coastal trade; (ii) structural support for Australian flagged ships operating primarily in the international trade; and (iii) a coasting trade permit system that allows foreign flagged ships to operate in the coasting trade under limited and specified conditions (that creates competitive neutrality in the Australian domestic freight market, and which is responsive to the varying circumstances of shipping operators, particularly those Australian shipping operators who also use the permit system).

PRINCIPLES TO UNDERPIN THIS POLICY OBJECTIVE: The key principles that must guide the reform of legislation to give effect to the policy objective and ensure a sustainable Australian domestic shipping industry are:

1. That Continuing or Unconditional licensed vessels be the default regulated vessels for carriage of Australian coastal sea freight.
2. That Temporary licenses (as defined) and permits (as redefined) only be issued as a short term measure until a licensed vessel becomes available or is introduced.
3. That the applicant for a temporary license or permit (in conjunction with the client on whose behalf the applicant be required to make out the business case as to why a licensed ship cannot be used and if the business case is successful) be required to make a binding commitment to invest in, or to secure, a vessel within a specified time frame that must then be licensed to operate in the coastal trade when the temporary license or permit lapses.
4. That the issuing of a licence to a non Australian registered vessel must be accompanied by a binding commitment to bring the non-Australian flagged licensed vessel under the Australian flag at an agreed time in the investment or charter cycle.

5. That the artificial distinction between the coasting trade and the coastal trade be eliminated:
 - We put this view based on advice of the Attorney General's Department that the concept of operating in the "coasting" trade as defined in the Navigation Act, and the concept of "trade and commerce" between the States, as described by the High Court in *Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc* (2003) 200 ALR 39; (2003) 77 ALJR 1497; (2003) 121 IR 103; [2003] HCA 43 is not a distinction recognised in international maritime law.
6. That the artificial distinction between interstate and intrastate trade be eliminated so that there is one national system of coastal voyage permits.
7. That the Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping be codified in Regulations made under the Navigation Act to ensure they have statutory force.

WHAT NEEDS TO BE DONE: What is required is a revision of the cabotage provisions in Part VI of the *Navigation Act 1912* so that there is a fundamental requirement that as far as possible, Australian domestic sea freight be carried on Australian licensed vessels using Australian crew who are covered by employment arrangements established by Australian industrial law. Under this model, temporary licenses (as defined) and permits (as redefined) will only be issued as a short term measure until a licensed vessel becomes available or is introduced.

THE BENEFITS TO BE DERIVED FROM IMPLEMENTING THE POLICY ARE:

1. The opportunity to develop business models founded on long term contracts and not spot (permit) cargoes – to achieve surety of scheduling and cargo delivery, and improved service standards;
2. Maximisation of ship utilisation and integration of the entire supply chain freight forwarding benefits, thus reducing unit costs;
3. The opportunity to build or charter customised vessels that meet the needs of shippers and localised port/wharf arrangements;
4. Minimisation of risk of ship or ship operational failure which can result in costly collateral e.g. the Pacific Adventurer oil and chemical spill;
5. The building of a second tier support infrastructure in the nation's maritime security and defence capability;
6. Minimises the opportunity for exploitation of Australia's coastal sea freight market as a tax haven for international flag of convenience vessels; and
7. Reduces greenhouse emissions by providing the opportunity to increase freight on ships, the least energy intensive of all the freight transport modes.

2. Fiscal support to encourage investment in Australian ships and to support workforce development

THE POLICY OBJECTIVE: To introduce (or restore) a package of contemporary, internationally accepted fiscal measures to encourage investment in modern and efficient Australian registered ships, and to link the tax incentives to ship operator commitments to train Australian seafarers aimed at addressing the seafarer labour shortage.

THE POLICY PROBLEM: The abolition by the Howard Government of the shipping industry depreciation allowance, the *Ships (Capital Grants) Act 1987* and the PAYE rebate scheme (a scheme that assisted seafarers in the international seafarer labour market) in 1996 without any replacement policy, combined with the liberalisation of the coastal trade permit system has resulted in an absence of investment in Australian ships over the past 14 years. As a result, the Australian fleet has continued to decline, the remaining fleet has aged and ship productivity has stagnated.

THE POLICY SOLUTION: Introduction (or restoration) of a package of fiscal policy measures that are considered international best practice and which are designed to:

- Attract investment in Australian ships i.e. replacement tonnage for the coastal trades and in Australian registered ships predominantly engaged in the international trades;
- Create a competitive market place for shipping investors, be they Australian or foreign entities;
- Ensure that bareboat charterers are not disadvantaged (relative to other forms of ship leasing), noting that bareboat charters are essential to ensure that such vessels can be crewed by Australians;
- Require entities that take advantage of competitive Australian fiscal measures to:
 - (i) Meet a minimum training requirement (for training of Australian seafarers); and
 - (ii) Make ships berths available for training, including for the trainees of other entities.
- Creates the pre-conditions for introduction of a package of employment and labour relations arrangements on Australian flagged vessels trading primarily internationally, should the Government propose such an initiative, that helps make those vessels internationally competitive.
- Consider the development of regional employment opportunities consistent with the Rudd government regional development program in Australian flagged vessels predominantly trading internationally.

There are three elements to the fiscal measures that are being advocated by the MUA and the shipping industry:

A Tonnage Tax to replace the current corporate tax provisions, whereby the tax payable by an eligible shipping entity is based on the registered tonnage of vessels multiplied by a fixed amount of deemed profit per tonne, instead of the actual accounting profits from the exploitation of a vessel. The benefits of a tonnage tax regime include:

- Increasing tax revenue by encouraging ownership by entities that must undertake their commercial and strategic management from Australia;
- Certainty in the tax revenue collected annually;
- Creation of a local high value service industry such as insurance, finance and legal to facilitate ship ownership activities (commonly referred to as a maritime cluster).

Tonnage tax delivers certainty to business owners and governments. A tonnage tax regime would increase the revenue taken by Australian authorities via the encouragement of business development within Australia.

Removal of the Royalty Withholding Tax from Bareboat Charters to enable an Australian resident company to operate a ship with significant Australian content (such as crewing and flag) and control without the higher risks associated with large capital expenditure that arise with ship ownership.

Bareboat charters to Australian companies attract Royalty Withholding Tax of between 10 – 30%. This tax is not payable for ships operating under permit or time charter, which generally have a high level of foreign content and control. Bareboat charterers, which need to be encouraged, are therefore disadvantaged under current tax arrangements.

Efforts to rebuild the Australian industry need to ensure that all arrangements available to ship operators are feasible (direct ownership, voyage, time and bareboat charters). In order to increase the Australian content of shipping activity, bareboat charters should be promoted.

The MUA (and the ASA) submit that the Royalty Withholding Tax should be removed from bareboat charters to Australian resident companies.

Introduction of income tax amendments for seafarers on Australian flagged vessels working internationally so that professional seafarers are made more cost competitive with international seafarers serving in international trades thereby increasing job and training opportunities, and the return of seafarers with international experience to key maritime roles in Australia.

Securing the maritime skills base for Australia to be able to fill key, strategic roles in the future will rely on increasing the opportunities for Australians to serve at sea. The shortage world-wide of seafaring officers reinforces the view that we cannot rely on importing these skills to fill these important positions.

The MUA (and ASA) believe that Australian seafarers should be taxed according to a sliding scale based on the time those seafarers are in the international seafaring trades. The following sliding scale is proposed:

- Less than 90 days – full Australian income tax payable.
- Between 120 and 180 days – partial tax concession.
- Over 180 days – zero Australian income tax payable.

3. An approach to a proposal that revitalises Australian flagged international trading ships

THE POLICY OBJECTIVE: The creation of an incentive for vessel owners engaged in international shipping, be they Australian or foreign, to register their ships in Australia and operate their international ships from Australia. This would help ensure that ship strategic and commercial management is conducted from Australia (a pre-condition of a tonnage tax), and could be a key factor in helping build a maritime cluster in Australia. A competitive ship registration system is a key commercial consideration in international ship operations. The investment incentive created by a tonnage tax necessitates a ship registration system that can accommodate international ships as an alternative to use of Flag of Convenience (FOC) registries.

THE POLICY PROBLEM: Foreign ship owners cannot currently register (flag) ships destined for use in the international trades, in Australia. In addition, it is difficult for Australian ship owners to register (flag) ships destined for use in the international trades, in Australia. This inevitably forces owners to register their ships in a FOC Registry (a tax haven) or in a foreign registry where the nation has introduced a tonnage tax. Australia is currently denied the opportunity to build a shipping industry cluster and leverage economic opportunity from participation in the international shipping industry.

THE POLICY SOLUTION: The Government could consider, as many submissions to the shipping inquiry proposed, the establishment of an internationally competitive shipping support system as a measure to complement the introduction of a tonnage tax and other fiscal incentives. Such international shipping support for Australian registered vessels would need to complement and support cabotage provisions, and contain tight controls to ensure that ships in an international register could not undermine or replace cabotage or domestic Australian flagged shipping. The creation of an Australian flagged international ship support structure could create the foundation for Australian commodity exporters (like BHP Billiton, Rio Tinto and Fortescue Metals) who operate ships or who charter ships, to carry their export commodities in ships registered under the Australian flag.

The MUA would only support such a proposal if the following conditions were met:

- Any Australian flagged international ship support structure could not undermine the domestic ships register;
- That it secures employment and training opportunities for regional Ratings as a key element of a regional shipping policy; and
- That the labour relations arrangements for such Ratings be secured under the *Fair Work Act 2009*.

WHAT NEEDS TO BE DONE: Should the Government propose this policy mix (to complement the restoration of a balanced cabotage system), the MUA has identified two sets of amendments that may be required for the *Shipping Registration Act 1981* (SR Act):

- The first set of amendments relates to those changes to the SR Act that might be required if the Government policy package commits to support a stronger Australian role in international shipping, through for example, the creation of an Australian international ships register with pre-conditions that its use could not undermine Australian flagged domestic shipping.

- The second set of amendments relate to the mortgage provisions of the SR Act.

When the Government determines the best way to revitalise Australian participation in the international shipping industry, the Government would need to consider the following reforms:

- Changes to the SR Act to maintain a comprehensive domestic or cabotage ship registration system promoting and relying on the use of Australian resident crews and essentially designed to cater for vessels participating in the Australian coasting trade aimed at supporting the provisions in Part VI of the *Navigation Act 1912*;
- The inclusion of conditions protecting Australian crewed domestic shipping, as defined above, in any legislative provisions to create an international ship registration system for entities who propose to operate from Australia in international shipping;
- Revision of the mortgage provisions in the SR Act to so that they actively facilitate the financing and leasing of vessels from Australia in a commercially attractive way; and
- Creation within the Australian Maritime Safety Authority (AMSA) of a separate business unit to administer ship registration with a client service focus aimed at actively promoting investment in ships registered in Australia that could ply the international trades.

It is the view of the MUA that a well designed interaction between the mortgage provisions of the SR Act and the registration requirements of the *Personal Properties Securities Act 2009* (PPS Act) on the one hand and the operation of the *Admiralty Act 1988* (Admiralty Act) on the other. Given that the Admiralty Act (and Australian case law built up around the operation of the Admiralty Act, as well as the Admiralty Rules) addresses issues such as the ranking of for example a lien (recovery of liens is considered internationally to be an important feature of a ship registration system that is considered by lenders and investors) relative to a mortgage, it will be important that lenders, investors and other security interests can have confidence that the Australian ship registration system is:

- Simple, reliable, consistent and robust;
- Easy to understand and use (designed to minimise litigation);
- Transparent;
- Structured to meet international best practice; and
- Commercially attractive and cost effective.

It is the MUAs observation that in order to achieve this outcome the Government would need to move as a priority to ratify the UN/IMO International Convention on Maritime Liens and Mortgages, 1993 and the UN/IMO International Convention on the Arrest of Sea Going Ships, 1999. Unless Australia ratifies these Conventions, the global shipping community will undoubtedly lack confidence in Australia as a serious shipping investor nation.

4. Enhanced Workforce Development Arrangements

THE POLICY OBJECTIVE: The continuation of an industry led approach to workforce development, maritime skills and training, with enhancements that will:

- Ensure there is better data on which to plan to meet future training needs of the maritime industry.
- Increase the availability of funds for maritime training to achieve a better match of supply of, and demand for, maritime training.
- Better coordinate the delivery of maritime training and increase the quality of that training.
- Achieve better integration of the on and off-the-job components of maritime training (in particular to better coordinate the availability of ships berths to support on the job training) and improve career path opportunities.
- Ensure employers are fully supported in achieving the training required for their enterprise or business and that such training is of high quality and is efficiently delivered.

THE POLICY PROBLEM: There are frequent periods where there is a shortage of qualified maritime labour to crew ships operating in Australia and to meet the onshore maritime skills requirements of a maritime nation.

THE POLICY SOLUTION: The enhancement of current maritime training architecture which maintains the central role of industry, and which is collaborative and participative. The key to an industry led package of arrangements is that industry (employers and unions) takes the lead in determining:

- The requirements and forward projections for training demand:
 - Noting that such a lead role will continue to be dependent on Government properly funding ongoing workforce planning requirements.
- The emerging technological and job specifications that guide training outcomes, so that training delivery meets both occupational and licensing requirements:
 - Noting that such a role requires support from licensing authorities in identifying licensing requirements, support from industry in identifying job roles and associated skill requirements, and training package experts in determining how to package the relevant competencies.
- The quality of training and in particular the quality of on-the job-training:
 - Noting that such a role requires support from training providers.
- The provision of on-the-job (seatime) opportunities and employment at the completion of training:
 - Noting that such a role can be strongly supported by the availability of appropriate and tailored Government incentives.

It is the view of the MUA that the placement of industry at the centre of the maritime workforce development and training system will ensure that the outcomes from the training system more closely

match employer's needs but importantly, will offer greater choice and flexibility to employers in how the system delivers those improved outcomes.

5 An industry and innovation package to nurture investment and start-up in the initial years

THE POLICY OBJECTIVE: To provide an industry and innovation package to nurture investment in Australian ships and to assist entry to the Australian shipping market during the start-up phase of a new national shipping policy.

THE POLICY PROBLEM: Adoption of a new regulatory framework and introduction of fiscal measures will provide certainty and a competitive foundation to commence the revitalisation of Australian shipping. However, investors will still need support during the start-up years if entry to this high capital intensive industry, which is such a state of disrepair, and where there is clear evidence of market failure, is to be sustained and business viability is to be ensured, without supply chain disruption.

Things that are important to entrepreneurs include: access to data for business planning such as freight flow data; market information such as freight forwarder knowledge of shipping; and interface issues at ports impacting on Australian ships such as access to berthing slots. These are all market factors that require restoration and nurturing if the shipping policy package is to stimulate a sustained period of investment and renewal and if investments are to be substantial.

THE POLICY SOLUTION: What is required is a tailored industry and innovation support package designed by the Department of Innovation, Industry, Science and Research with other agencies such as Trade, and in collaboration with industry, so that there is a single point of contact, advice and grant/seed funding that could be accessed by investors in Australian shipping.

- One component of the support package could involve a Government and industry analysis of proposed business plans for investment in the Australian coastal trade and to advise prospective new entrants on the range of industry and innovation support measures that are available or which could be packaged/developed to support the new entrant. That assessment could assist the investor by having regard to the full spectrum of Government policy objectives that complements investment in shipping (including procurement policy, national Defence requirements, infrastructure development, increasing productivity, reducing greenhouse emissions, creating competitive neutrality among freight transport modes and creating an efficient transport market).
- A second component of the support package could involve consideration of a tailored package of industry support measures to assist new entrants in the start up period, involving both Commonwealth and State/NT elements, as follows:

Commonwealth

- Committing to innovation support e.g. in relation to dual fuel engines as part of an energy efficiency plan (one of the key innovation issues revolves around the potential for using alternative clean fuels in ship engines. We believe there is scope for Government support for entrepreneurs committed to invest in new ships that also commit to use clean fuels).
- Assessing opportunities to attain commitments from the Department of Defence/Defence Services that a greater proportion of long haul coastal corridor Defence cargo be moved by ship.
- Inclusion of the shipping option in Commonwealth procurement policy as a must consider where there is a transport component to the tender.
- Provision of access to new venture finance and/or bank guarantees for the charter hire obligations of the start up commercial entity who commits to licence and flag their vessels in Australia.
- Access to financial support for business development, which in this sector is primarily required for entrepreneurs/financers to travel to negotiate with international shipping agents/suppliers on ship purchase and leasing (i.e. sourcing of suitable vessels):
 - and provision of a Government letter of introduction/support to assist those commercial negotiations.
- Ensuring Austrade becomes involved in the revitalisation of Australian shipping, by:
 - Promoting direct foreign investment in Australian shipping; and
 - Assisting companies who wish to directly market opportunities for foreign direct investment in Australian shipping.

State/NT

- Opening a dialogue with the States and Territories seeking their commitment to a phasing in of mandatory requirements that oversize cargo be removed from road transportation, which by definition would open opportunities for such cargo to be transported by ship;
- Assessment of opportunities through Port Authorities and stevedores to reduce wharf and other State/NT charges for start-up coastal shipping operators; and
- Provision of port upgrades to accommodate domestically tailored vessels such as Ro-Ro vessels and self dischargers, and their wharfage/stevedoring requirements.

Establishment of a Shipping Industry Start-up Taskforce

The MUA also proposes that the Government establish a Shipping Industry Start-Up Task Force comprising Government, industry and unions to oversee the development and implementation of an industry support package.

- One of the key innovation issues revolves around the potential for using alternative clean fuels in ship engines. We believe there is scope for Government support for entrepreneurs committed to invest in new ships that also commit to use clean fuels.

