

2011

REFORMING AUSTRALIA'S SHIPPING Stakeholder discussion paper

AUSTRALIAN SHIPPING TIME TO ACT



Department of Infrastructure and
Transport

Submission by:



31 January 2011

Executive Summary and Introduction

The Australian Shipowners Association (ASA) represents major Australian corporations operating in deep-sea trading and cruising, towage, salvage and offshore oil and gas support sectors. ASA Members variously operate internationally, domestically or both. They operate Australian ships, foreign ships, employ Australian crews or foreign crews or both. They hold coastal licences and utilise single and continuing voyage permits. Notably, some of ASA's Members are very large cargo interests. ASA Members own ships, operate ships, charter ships in and out and manage ships.

ASA's Members are:

- ANL Container Line
- ASP Ship Management
- BlueScope Steel
- BP Australia
- Caltex
- Carnival Australia
- EMAS Offshore
- Farstad Shipping (Indian Pacific)
- North West Shelf Shipping Service Co.
- P & O Maritime Services
- PB Towage
- Perkins Shipping
- Queensland Alumina Limited
- Rio Tinto Marine
- SeaRoad Shipping
- Shell Tankers Australia
- Svitzer Australia
- Swire Pacific Offshore
- Teekay Shipping (Australia)
- The Shell Company of Australia
- Tidewater Marine

Australian operators see themselves as operating in a global environment. ASA Members noted that they operate under 19 flags of registry and with 25 nationalities of crew.

ASA support the Government's objectives as outlined in the discussion paper and welcomes the opportunity to provide this feedback to further develop the policy package.

At the outset ASA would like to make one very important, overarching comment. The best chance of success of the entire policy package is for the package to apply as widely as possible to encourage the greatest level of participation in the Australian shipping sector across all shipping activities – bluewater trading; cruising; offshore oil and gas exploration and production supply and support; construction; seismic; towing; anchor handling; harbour towage; salvage and response; barges; ferries; etc.

This not only encourages a broad base of investment but importantly builds the maritime cluster – the support activities ashore such as finance, insurance, legal and accounting specialists etc – that generates another level entirely of business activity and investment, resulting in new sources of Government revenue.

Many parts of the package appear to exclude parts of the 'shipping industry' by confining application to "trading ships" only. The best chance of success of the entire policy package is for the package to apply as widely as possible.

ASA urge the Government to broaden the scope of application to the broadest possible section of the Australian ship owning industry.

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1 Regulatory Environment

The Australian cabotage regime has posed many challenges over many years in terms of seeking to provide an appropriate balance between access to appropriate shipping services and understanding the peculiarly Australian circumstances for the movement of domestic freight. The discussion paper proposes a significant change to the existing regime.

1.1 Part VI of the Navigation Act

The issues surrounding the structure of the cabotage system are complex. It is essential in whatever the structure is in the future that access to adequate shipping services is available and that there is certainty for all the parties.

More flexibility may be required in the short term for transitional arrangements while Australian businesses are considering the potential of investing in ships to operate under the entirety of the shipping policy package (perhaps a fleet of ships with a mix of licences and Australian International Second Register (AISR) temporary licenses).

The measures put in place for shipowners (tonnage tax etc) should have the effect of lowering the operating cost of Australian vessels and thereby make them more competitive with foreign vessels. However, the labour costs remain the most significant element of cost differential between Australian and foreign vessels and so the outcome of the labour reform discussions will be critical to these changes being acceptable and practical.

Further work is required to explain/visualise a new paradigm where there are many Australian ships, particularly AISR ships, capable of undertaking the work currently undertaken by permit/foreign ships. This is critical to assure cargo interests that the number of ships required by them will be available and that the cost will not rise dramatically.

1.2 Repeal of s.287 of the Navigation Act

Section 287 of the *Navigation Act 1912* (Cth) (the Act) makes it an offence for a licensed ship to be in receipt of a subsidy from a foreign Government.

ASA believes that this clause:

- Creates significant uncertainty for vessel operators.
- Provides no benefit to any party.
- Provides no protection to any party.
- Is counter-productive in serving to inhibit the growth of coastal shipping.
- Contributes in no positive way to the application of the Act

ASA believes that this section of the Act should be repealed. Only positive outcomes would result from doing so by removing the current uncertainty.

1.3 Fair Work or Navigation Act provisions when in coasting trade

Since the *Fair Work Act 2009 (Cth) (FW Act)* has extended coverage already it is not clear why the Act needs to make any reference whatsoever to employment conditions. The appropriateness of remaining in the *Navigation Act* should be reviewed in light of the other changes to the Act and / or the FW Act in connection with Part VI application.

1.4 Application to all ships over 500GT

This change to the Act has implications for the various sectors.

The current application of the Act being limited to only inter-state voyages creates a range of issues for the industry including:

- uncertainty for all parties;
- multiple, inconsistent, administrative and regulatory arrangements; and
- gaps in terms of 'cabotage' application.

ASA supports the coverage of the Act to all trading voyages whether intra- or inter-state to provide consistency and certainty to the industry.

Current practice for vessels operating in the offshore oil and gas sector is, more often than not, not to opt-in under Section 8A. The reasons for this vary and the consequences of application of the Act to a sector of the industry currently not automatically covered require careful consideration and further consultation.

1.5 Excluding deep sea cruises

The nature of the cruise industry is sufficiently different to other vessel operations to justify different arrangements. The current arrangements for exemption from the licence/permit system for the cruise industry undertaking cruises as described (deep water of two days or more duration) appear to work well and ASA support retaining that system.

1.6 Retention of 'coasting trade' definition

The definition should be reviewed once other parts of this section of the Act have been settled to ensure that the definition is appropriate to any revisions made. On the face of it, it appears that retention of the existing definition will be appropriate.

2 Australian International Shipping Register (AISR)

The low-level, almost non-existent, participation of Australian ships in the carriage of Australia's international trade is without doubt one of the most significant lost opportunities to the nation over the past decades.

At the same time, Australian expertise in vessel operation across the board – in offshore oil and gas and cruising not just bluewater trading – demonstrate that Australian companies want to own and operate their shipping business from Australia and be active in international operations/activities.

The introduction of an appropriately structured international register has the potential to significantly increase the number of Australian controlled ships. In doing so the AISR will add value to the Australian economy and bolster the Australian shipping sector in such a way that the effects will flow to domestic operations and shore based maritime related industries.

All vessel types and operating characteristics ought to be eligible for inclusion on the AISR to encourage Australian shipping activity world-wide, across maritime industries.

2.1 Master and Chief Engineer to be Australian Residents

The current skills profile of the industry will make the requirement of Master and Chief Engineer difficult to comply with – there simply may not be the number of individuals required to meet the demand.

ASA supports a percentage of the crew figure being Australian nationals without specification of the rank/position of those individuals to provide flexibility to fill the national requirement.

A system for exemption would be required for any mandatory national/residency criteria for circumstances where this cannot be met. Such an exemption might require the 457 visa arrangements to be reviewed to ensure the approval process is streamlined.

The attractiveness of the AISR is dependent upon the ability to be competitive. One key element of being competitive is being absolutely assured that the ship will be adequately crewed – a local shortage should not undermine the ability of the ship to operate.

2.2 Minimum workforce standards

Consideration needs to be given to the appropriateness of the current certificate of recognition process undertaken by AMSA when considering the qualifications of foreign seafarers. The Australian process for recognising foreign ticket holders is more onerous than most, if not all, other countries. Changes to Marine Orders Part 3 may be required to streamline the process and provide consistency with the provisions of the Convention for Standards of Training, Certification and Watchkeeping for Seafarers.

3 Financial Issues

As noted previously, the best chance of success of the entire policy package is for the package to apply as widely as possible to encourage the greatest level of participation in the Australian shipping sector across all shipping activities – bluewater trading; cruising; offshore oil and gas exploration and production supply and support; construction; seismic; towing; anchor handling; harbour towage; salvage and response; barges; ferries; etc.

This not only encourages a broad base of investment but importantly builds the maritime cluster – the support activities ashore such as finance, insurance, legal and accounting specialists etc – that generates another level entirely of business activity and investment, resulting in new sources of Government revenue.

3.1 Tonnage Tax

The proper design of the tonnage tax requires much further work, presumably via the reference group on Taxation. It is important to note that many of the existing tonnage tax regimes worldwide, particularly the European regimes, have recently undergone considerable review and revision. The Australian Tonnage Tax regime needs to not just compete with these models, but preferably offer something more in order that sufficient incentive is provided so that existing business might restructure to increase their Australian activities and new businesses establish Australian bases.

As noted above, the broadest possible inclusion of vessel types and operations should apply to maximise the benefits of the introduction of the tonnage tax to the national economy by building the entire maritime base.

3.2 Accelerated Depreciation

A period of effective working life of maritime assets could well be argued should be in line with those offered for land based industries, such as heavy vehicles, of 7.5 years.

3.3 Entry and Exit

Above all else the industry will require certainty of the terms and rates applicable to a tonnage tax regime. This period of certainty would reasonably be 10 years; however the details of how changes to participants' circumstances will be dealt with during this time will need detailed consideration.

3.4 Roll Over Relief

Roll over relief is a common measure available in other countries and is very effective means to enable shipowners to deal with cycles in the markets that influence investment in tonnage.

This inclusion of this measure is supported as part of the fiscal package.

3.5 Qualifying Conditions

Restricting the qualifying activities to commercial trading activities eliminates the opportunity for vessels involved in the offshore oil and gas sector to participate in the

Australian shipping sector. This is a significant shortcoming in terms of providing the economic stimulus to make shipowning a viable option in Australia and in terms of providing a comprehensive consideration of the maritime skills requirement and training potential.

The offshore oil and gas sector at any time has approximately 75 large support / supply / anchor handling vessels permanently in Australia. This number fluctuates according to the activities of the sector at any given time, but considering the trading fleet is currently less than 40 vessels, the offshore oil and gas sector is considerable.

The benefits to the nation of a vibrant shipping sector are considerable and extend well beyond the sector itself. The so called 'Maritime Cluster' that results when ship ownership and operation flourishes includes the high-value service industries of finance, insurance and technical maintenance to name but a few.

Without the inclusion of the entire shipping sector, the ability of the nation to develop a critical mass is greatly limited and thus the benefits from the activities of these service industries are significantly reduced.

The majority, if not all, of the larger vessels operating in the offshore oil and gas sector are foreign flagged. The company structures in place are those that understandably minimise the Australian tax. An opportunity exists for Australia to encourage these companies to consider Australian flag and the Australian tonnage tax system- thereby generating revenue for the Government that does not currently exist.

The size of the offshore oil and gas sector vs the bluewater and towage fleets means that they currently employ more than half of all seafarers in the country. This poses many challenges for the broader industry in terms of skills and training distribution.

The value of introducing a training commitment for ships accessing the tonnage tax is seriously undermined when over half of the skills requirement exists in a sector that has been excluded from the tonnage tax regime.

ASA strongly recommend a revision of the application of the tonnage tax to include vessels in the offshore oil and gas sector. This recommendation is given on the basis that application of the tonnage tax in this way will encourage Australian ship ownership in the sector, generate a new stream of taxation, and include the offshore oil and gas sector in the skills issues being considered in parallel with the tax measures.

3.6 Seafarer Taxation

In response to the Government's request for advice on what would work for the industry with regard to shipping policy reform, ASA produced a publication entitled *Shipping Policy Package 2009*. Considerable thought went into the proposal put forward regarding seafarer taxation. The seafarer taxation proposal as outlined by the Government has made two significant amendments to ASA's proposal. It is concerning that the Government's amendments restrict the application of the seafarer tax changes and greatly reduce the application of the tax changes – to the point of providing very little value to the industry.

The restrictions on the application of the tax remove the flexibility sought by employers to deploy crews across their fleets. The restrictions would add an uncompetitive element to the cost base for an AISR ship being used in coastal trades (such as triangulation – where a ship mixes coastal and international voyages).

The language used again limits the application of this section to trading or bluewater ships. The offshore oil and gas sector accounts for over half of all Australian seafarers and opportunities to work internationally in this sector should be encouraged as much as they will be in the bluewater sector. This is vital if we are to be successful in growing the skills base and encouraging Australian's to pursue careers at sea and bring those skills home to Australia to meet domestic demand at sea and ashore.

The administrative burden that would be involved with the regime as described is significant.

The philosophy behind the change to define qualifying period as qualifying vessels other than Australian 'coastal voyages' is not clear – hence it is difficult to make appropriate suggestions as to changes that would meet the Government's objectives and remain practical and attractive to industry.

ASA recommends that the proposed changes to seafarer's tax as prepared previously by ASA be reconsidered for inclusion in the package of measures. This proposal is included herein for completeness.

Extract from ASA Shipping Policy Package, 2009

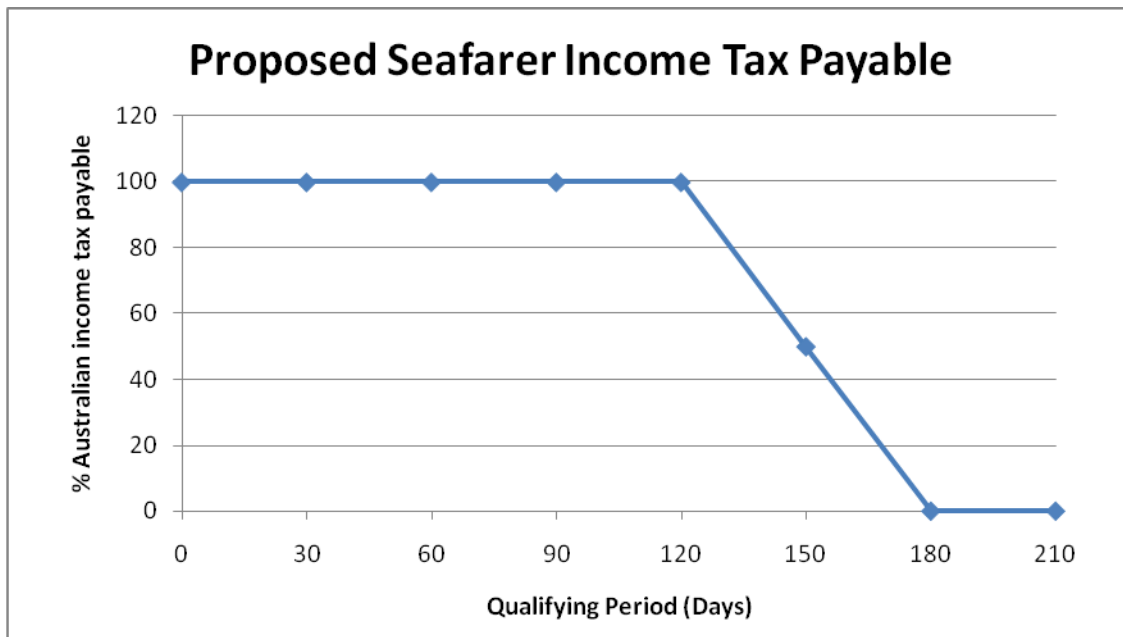
Australian officers are cost competitive with their international counterparts but for the income tax payable by Australian seafarers.

An adjustment to the taxation arrangements for Australian officers would see these professional seafarers made cost competitive with international seafarers (officers) serving in international operations and would increase the opportunities to place Australians for training in international operations.

Australian seafarers should be taxed according to the following sliding scale:

“Qualifying Period” = **Time spent on a qualifying ship:**

- Less than 90 days – full Australian income tax payable
- Between 120 and 180 days - see graph below.
- Over 180 days – zero Australian income tax payable



A qualifying ship is:

A ship that operates outside of Australia for [the majority of the time] [at least 180 days each year].

Qualifying ship?

Need to be able to find a solution that is:

- a) good for Australian companies engaged in partially international operations; and
- b) good for Australian seafarers working overseas.

Shipowners see it as important to permit flexibility in the deployment of the seagoing workforce so that they may be able to be moved amongst a fleet of vessels without affecting their tax status.

Likewise to enable flexibility in the operation of vessels it is important that ships conducting a mix of international and coastal activities do not incur seafarer income tax for part of the voyage.

Other options considered included a destination to destination basis (see description below). It was determined that this would be administratively cumbersome and very restrictive in terms of flexibility.

DESTINATION TO DESTINATION BASIS

Time out of country is exempt from tax, calculated on destination to destination basis

e.g.: Singapore to Brisbane – exempt
Brisbane – Sydney – not exempt
Sydney – Hong Kong – exempt
Hong Kong – Singapore – exempt

Or

Dampier – Offshore installation (within EEZ) – not exempt
Offshore installation – Singapore – exempt

APPLICATION ONLY TO INTERNATIONAL OPERATIONS

If seafarer tax changes only applied to working 'internationally' one consequence would be that, in combination with the tax treatment by other nations, for the shipowner it is more cost effective to employ, for example, UK nationals in Australia and Australian nationals in the UK.

This way both nationalities are working overseas and hence are exempt from their respective income tax regimes but neither are working at 'home'. This may be seen as counterproductive and a broader application to the income tax exemption could be considered to address this.

What happened to requesting changes to s.23AG?

Amendments to section 23 AG of the Income Tax Assessment Act have long been sought to provide Australian seafarers with the same treatment as other Australian workers overseas.

Other nations, including UK, Germany, Netherlands, Denmark have shipping industry specific measures for the treatment of income tax for national seafarers.

In considering measures that would be required for Australian seafarers to compete in the global shipping environment – including Australian international trades – it would be necessary to extend amendments to Australian law beyond what 23AG offers.

The restriction 23AG imposes is that if serving on a ship that trades to/from Australia then every time that ship enters Australian waters the qualifying period out of the country re-sets (i.e. it is not cumulative time out of the Country) under the provisions of s.23AG.

Note, the 2010 budget made significant change to s.23AG in any case – the scope of application is now far more restricted than previously was the case.

Employer vs Employee obligation to manage tax?

In the UK the obligation to manage income tax falls on the employee. If an individual will be signing off their ship a week short of the required 183 days they make their own arrangements to ensure that the required time away is met.

In the Australian context two scenarios are possible:

1) Australian employer.

In this scenario the employee is employed by an Australian company and works on vessels as determined by their employer – this could be vessels operating international or coastally or a combination of both.

In this scenario the employer will need to manage the tax payable depending on the time spent on various vessels. For example, if the seafarer spends 100 days on vessels operating internationally but then the employer deploys them to work on a purely coastal operation the employer will need to ensure the tax payable is included in the employees pay structure.

2) International employer.

In this scenario the employee is employed by a foreign employer and it is up to the individual to manage their own qualifying time working overseas etc. The wage rate the individual has accepted as payment will reflect their expectations regarding whether they qualify for exemption or not.

3.7 *Royalty Withholding Tax*

Under the new shipping policy structure in Australia it will take time for the purchase / ownership of vessels to be concluded. In the meantime, and even ongoing as market conditions change and opportunities present themselves, Australian shipowners will need the flexibility to bareboat rather than purchase ships.

ASA support removal of RWT from bareboat charters to encourage bareboat charters over time charters, thereby increasing the level of control Australian companies have over the vessel and her crew.

4 Cruise Shipping

As noted in the earlier section, the current exemption for cruise shipping from the license/permit regime appears to work well and facilitates the operational realities of this sector of the industry. ASA support the retention of this exemption and the proposed amendment to the definition of a cruise to embrace the entire journey.

Cruise ships are a very real potential for inclusion on the international register and as such the particular nature of the cruise shipping operations, particularly the crewing requirements going far beyond traditional 'seafarer' staff, need to be afforded close consideration when further developing the arrangements for the international register.

5 Coverage of Fair Work Legislation

5.1 *The Australian International Second Register*

The ability for Australian businesses to participate in the global shipping industry is reliant upon the ability to compete on a cost basis that at least approaches that available internationally. Australian workplace relations law does not come close to workplace relations arrangements applicable to the international shipping industry.

International ships' crews are not without protection. For instance, the International Transport Workers (ITF) have in place collective agreements with international shipping operators providing wages and conditions above the minimum standards set by the International Labour Organisation. In addition, many international seafarers benefit from tax exemptions meaning that they have a higher take home pay with lower overall labour costs to operators.

The application of Australian workplace relations law to vessels working internationally would impose a significant cost disadvantage on Australian businesses competing with international ships operating from an international cost base far below that of Australian domiciled businesses. This cost disadvantage would [all but] guarantee that such Australian businesses would move these operations offshore.

5.2 Coastal Shipping

Rebuilding Australia's coastal shipping industry is heavily reliant on the ability for Australian businesses to participate in international operations to build and retain the skills base needed to feed the coastal industry and the broader Australian maritime community. AISR vessels should also be viewed as essential assets as part of the domestic supply chain to be used to supplement the dedicated domestic ships.

Under the new regulatory arrangements as described in the discussion paper the direct 'competition' between licensed and permit ships has been replaced with domestic capability, supplemented by internationally competitive ships for capacity gaps and operational flexibility.

If it is perceived that the existing arrangements (whereby the FW Act) applies to foreign ships to decrease the cost gap between local and foreign ships) provides some advantage to the Australian shipowner then the new cabotage arrangements would make this perceived advantage redundant – since the direct competition element will have been largely removed. It ought to be noted that it is the view of the ASA that such an advantage to Australian ships / owners was never going to be a meaningful outcome of the application of the FW Act to some permit ships.

Increasing the cost of international ships undertaking domestic operations, some of which will now be AISR ships, will be counterproductive to all parties concerned due to the compliance burden that is associated with the FW Act, the National Employment Standards and the modern Seagoing Industry Award.

ASA would be pleased to see the application of the FW Act reviewed in combination with the other regulatory changes proposed as part of the package.

6 Training

ASA make the point again that the offshore oil and gas sector are a huge part of the 'shipping' industry in Australia, particularly when viewed from a skills perspective. This sector must be included in training regimes. The exclusion of the sector from the other parts of the policy package is a significant lost opportunity, an opportunity to deal with the industry in a comprehensive, cohesive manner that provides the greatest opportunity for policy success in terms of delivering a structure that will assist an Australian industry flourish.

The issues facing the industry in terms of training are vast and begin with the very difficult task of workforce planning. The ability to have some structure and support around this matter and to deal with training at a national not institutional level is supported by ASA.

7 Compact

ASA understands the Government's position and will work with the unions on issues of productivity, efficiency and competitiveness.

It is however ASAs view that the labour market reforms required are such that these discussions will require facilitation because of their critical nature and impact on the overall package.