



Australian Shipowners Association

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Submission to

The Australian Government Productivity
Commission

Annual Review of Regulatory Burdens
on Business: *Social and Economic
Infrastructure Services*

Introduction

ASA represents Australian companies who own or operate international and/or domestic trading ships, domestic towage and salvage tugs, scientific research vessels and offshore oil and gas support vessels. The Association also represents employers of Australian and international maritime labour. ASA Members' fleets utilise some 19 different flags of registry and 25 nationalities of crew.

The 'trading fleet' Members of ASA include companies whose primary business is to provide sea transport services to the freight market as well as companies whose shipping operations form an element of their supply chain. ASA Members participating in domestic trade utilise coastal licences, single voyage permits and continuing voyage permits. ASA Members are active in dedicated international trades under both Australian and foreign flags. Notably some of ASA's Members are very large cargo interests.

The Association provides an important focal point for the companies who choose to base their shipping and seafaring employment operations in Australia. The Association provides a range of support services and advice in the areas of ship operations and safety, environment, human resources, workplace practices, government relations, commercial operations, public relations and international direction.

Ships and shipping activities are regulated by a vast array of international law most of which is developed by the International Maritime Organisation (IMO) and International Labour Organisation (ILO) and adopted by flag States and port States.

These international regulations are the standard by which ships operate and apply to ships operated by ASA Members regardless of the country in which the ships operate. For foreign flagged vessels there may also be regulations imposed by the nation in which they operate however the purpose of nations collectively developing the IMO standards is to properly regulate the standards of international shipping.

In this context vessels participating in the offshore oil and gas industry of Australia are covered by Flag State regulations and Australian law that applies while working in Australian waters.

The application of Australian law can also be at federal and/or state level. It is not in the interests of efficiently managing shipping and our domestic industries that rely on those services to have multiple levels of compliance particularly when differences also exist state to state.

AMSA has a natural affinity to the role of vessels regardless of which sector they operate in. The skills they provide; their involvement at IMO and experience enacting and enforcing international law in the Australian context uniquely place AMSA as a regulatory authority for

vessels. AMSA is capable of ensuring compliance with IMO in the role of Flag State or in the role of Port State.

ASA has two key objectives:

- 1) To support and build the business of shipping in Australia.
- 2) To strengthen the skill base required to support and sustain the shipping industry and other maritime-related industries.

ASA's Members are:

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|-------------------------------------|-------------------------------------|
| ▪ ANL Container Line | ▪ North West Shelf Shipping Service |
| ▪ ASP Ship Management | ▪ P & O Maritime Services |
| ▪ BHP Billiton | ▪ Perkins Shipping |
| ▪ BlueScope Steel | ▪ Queensland Alumina Limited |
| ▪ BP Australia | ▪ Rio Tinto Marine |
| ▪ Caltex | ▪ SeaRoad Shipping |
| ▪ CSR Shipping Group | ▪ Shell Tankers Australia Pty Ltd |
| ▪ Bernard Schulte Ship Management | ▪ Svitzer Australia |
| ▪ Farstad Shipping (India Pacific) | ▪ Teekay Shipping (Australia) |
| ▪ Jepsens International (Australia) | ▪ The Shell Company of Australia |

Issues

The shipping industry crosses many jurisdictions including those of other countries, Australia's Commonwealth jurisdiction, and the six Australian coastal State and Territory jurisdictions.

Some particular issues of concern for the Australian shipping industry relating to unnecessary regulatory burden Include:

- The Victorian ballast water requirements
- State base regulation of Vocational Training
- Application of SOLAS vs. USL Code to ships on intra-state voyages
- Pilotage exemptions in Queensland.

Detail outlining the consequences of these regulatory burdens and inconsistencies are outlined in detail below.

1. The Victorian ballast water requirements

The Australian Government has had a mandatory border control mechanism for ballast water in place since 2001. Prior to the introduction of a mandatory regime a voluntary ballast water management regime ran for several years. Both the voluntary and mandatory systems experienced a high level of compliance (75-90%). This is an impressive compliance rate, since at the time Australia was one of very few national jurisdictions that had implemented ballast water management requirements.

The shipping industry operates within a highly regulated environment where the internationally agreed procedures of on-board recording and monitoring of activities and in port compliance verification are very effective in ensuring quality safety and environmental outcomes. Importantly, a degree of international and domestic consistency is important for the industry to maintain its good compliance record.

The creation of a patch work of regulation around the globe and within Australian State jurisdictions presents a particular challenge for the shipping industry and is commonly resisted by national shipping associations for good reason.

From time to time however, due to unique circumstances and the pace of international and domestic jurisdictional negotiations, administrations often feel a need to regulate unilaterally in particular areas. As an industry we accept that this may occur from time to time. In order to minimise the regulatory burden and maximise the 'level playing field' approach, the industry requires that unilateral implementation of rules is done in accordance with agreed international standards.

As a result of very protracted cross jurisdictional discussions and a significant influx of marine pests into Victorian waters, the Victorian Government, through the Environmental Protection Authority in 2004 introduced ballast water management legislation that prohibits the discharge of high risk ballast water into Victorian waters.

The relevant instruments are:

- Environment Protection Act 1970
- Waste Management (Ships Ballast Water) Policy
- Environment Protection (Ships Ballast water) Regulations 2006
- Protocol for Environmental Management

The Australian Shipowners Association made many representations during the development of the Victorian ballast water management requirements in 2004 in relation to, in particular, the very onerous ballast water prior reporting requirements. Under the Victorian ballast water regulations, a ship must submit to the EPA, 24 hours in advance of entering Victorian waters, a completed ballast water report form and a ballast water log which, together,

collect information on the most recent uptake, exchange and intention to discharge relating to each and every one of the ballast water tanks containing domestic ballast water. The ship must then receive written approval from the EPA prior to the discharge of any domestic ballast water into Victorian waters.

The Shipowners Association opposes this prior reporting requirement for the following reasons:

- The International Convention for the Control and Management of Ship's Ballast Water (agreed but not yet in force) does not require prior reporting – as such, the Victorian ballast water management requirements are inconsistent with the international agreement.
- The ballast water arrangements under the National System for the Prevention and Management of Marine Pest Incursions as agreed by all Australian jurisdictions does not require prior reporting - as such, the Victorian ballast water management requirements are inconsistent with the agreed national approach.
- The excellent compliance record of international shipping, as demonstrated by the voluntary and mandatory AQIS international ballast water management requirements does not indicate a need for an additional level of compliance checking such as prior reporting.
- Prior reporting creates a significant and additional unnecessary burden on ships captains and officers whose attention is better utilised in ensuring the safe navigation of the vessel under their command.

2. State based regulation of Vocational Training

It is apparent that training providers, who are charged with preparing individuals for employment within a national industry, are at times struggling with the State based Vocational Education and Training (VET) system.

Instances have surfaced where it is clear that RTO's have not attracted the full amount of State funding available. We have been advised that this is at least partly due to the complex eligibility criteria that differs from state to state, which often make compliance requirements (in order to attract the funding) too onerous for a national provider of training. This results in increased training costs imposed on the industry and increased administration to seek state based funding.

3. Application of SOLAS Vs USL Code on intra-state voyages

There are many issues relating to vessel survey jurisdictions. Generally large vessels (> 400 GT) are SOLAS vessels and subject to commonwealth survey and smaller vessels are subject to the Universal Shipping Laws Code (USL Code) and State survey. States often claim broad

jurisdiction over vessel survey for SOLAS vessels – particularly when they are engaged in intra-state voyaged.

These vessels are constructed to meet SOLAS conditions and requirements, which sometimes are not in alignment with USL Code. However, the requirements under SOLAS (or the commonwealth jurisdiction) in most if not all areas exceed that of the USL Code resulting in unnecessary duplication with regard to state survey requirements. This equates to a significant cost in terms of time and the direct costs of utilising qualified surveyors.

It is hoped that the implementation of the single national maritime jurisdiction will alleviate some of the jurisdictional duplication.

4. Pilotage exemptions in Queensland

Marine pilots provide advice to ship's Masters on navigation through areas that are deemed to require local knowledge to provide an adequate degree of safe navigation. Such areas may include the proportion of the voyage from port limits to vessel berth, or the area transiting the Great Barrier Reef and through the Torres Strait. The various regulations requiring pilotage may also allow for pilot exemptions where the master can demonstrate sufficient ship handling capability and local knowledge.

The Queensland Transport Operations (Maritime Safety) Regulation 2004 provides for pilot exemptions in S. 179, however it restricts the availability of pilot exemptions to vessels registered in Australia (Australian flagged vessels) regardless of the manning arrangements.

As a result, an otherwise "pilot exempt Master" will be required to utilise the services of a pilot when commanding a foreign registered ship, but the same master will be pilot exempt when commanding an Australian registered ship, through the same shipping lane.

The cost of using pilot services in some Queensland ports is around \$4000 per movement. For frequent users, this can equate to approximately \$400,000 per year.

ASA believes that the pilot exemptions should be applied to Australian ship masters who can demonstrate the appropriate skills regardless of the nationality of the ship under their command.

This issue can be further summarised by the following points:

- Often an Australian ship master in control of foreign flagged ship will hold or will be competent to hold a pilotage exemption based on all criteria, except for the nationality of the ship they happen to be sailing on that particular voyage.
- Often, the technical operation and manning of ships with foreign nationalities is identical to that of an Australian flagged ship. It is important to note, that if the ship

registration arrangements in Australia were competitive, it is more than likely that such a ship would be Australian registered.

- There is no safety of navigation outcomes to be achieved by the application of pilot exemptions to ship nationality. Pilot exemptions are only relevant to ship safety outcomes when attached directly to the demonstrable skills and local knowledge of the Master in command of the ship – not the ship nationality.

Contact for further information

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