[Received by email 27/02/09]

Shipping Australia is pleased to be given the opportunity to make a submission under the Division I: ANZSIC: Transport, Postal and Warehousing, 4810 Water Freight Transport.

Shipping Australia is a peak shipowner body representing 41 member lines and shipping agents (list attached) which would be involved with the carriage of 80% of Australia's international container trade, car trade and passenger cruise vessels as well as over 50% of Australia's international break-bulk and bulk trade. There are a similar number of corporate associate members that provide services to the maritime industry in Australia.

Shipping Australia's primary concern with the regulations in the maritime industry concern inconsistency between State and Territory jurisdictions, in particular and generally the increasing regulatory burden on ship operations.

In SAL's view, many regulatory agencies do not appreciate the impact of the additional regulations they are introducing on the overall regulatory burden on shipowners; simply because they do not really understand what that burden is.

This can impact on the safety of the vessel and certainly imposes additional indirect costs not only on shipowners and ship operators but importantly, on customers. Therefore SAL welcomes this review of that regulatory burden on the maritime industry in Australia.

Increasingly regulation is being introduced in the area of the environment, especially in relation to the discharge of ballast water for vessels travelling to Australia or between Australian ports. There is also the proposed introduction of new bio-hull fouling legislation and regulations in Australia and the proposed carbon pollution reduction scheme that will impact on our members carrying coastal cargo as licensed vessels under the Australian Navigation Act, 1912 or using Single or Continued Voyage Permits issued under the Navigation Act. We are also involved with the development of the oceans policy in Australia including assessing the impact of marine debris on vertebrate marine life.

In addition there are, as the Productivity Commission would be aware, a raft of regulations relating to maritime security, concerning ship board security as well as security regulated areas in Australian ports. Mandatory application of maritime crew visas for foreign crew visiting Australia from 1 January 2008 is worthy of specific mention as Australia is only the second country in the world to introduce such a regime of regulation. The coastal shipping policy review carried out by the Parliamentary Committee last year has recommended that there be a review of that scheme. That recommendation and others are still being considered by the Australian Government.

Much of the legislation and regulations applied by border agencies such as Customs, Quarantine and the Department of Immigration and Citizenship as well as the

Australian Maritime Safety Authority clearly have an impact on this industry. Officers of these agencies have, at times interpreted regulations in different ports in Australia in different ways but we have worked very closely with these agencies in trying to reduce that inconsistency. Misdeclared or overweight containers is a problem for the international container industry in Australia as in other countries but the chain of responsibility legislation which was developed as model legislation by the National Transport Commission has been interpreted slightly differently in each State which again makes the achievement of constancy in the applications of such regulations more difficult.

Another example of inconsistency has been discussion between certain States regarding the application of their own regulations governing interstate or intrastate ballast water discharges and Victoria, for example, have had their own system separate from the national system for some years. There are ongoing discussions with the Department of Agriculture, Fisheries and Forestry to develop a nationally consistent regime in this area.

Regulators in Australia who are developing legislation which impact on the maritime industry may not be aware that a vessel must comply with the following mandatory rules:

- Classification society or class rules
- Code of conduct
- COLREX
- IMO resolutions including those of the Maritime Safety Commission and the Maritime Environmental Protection Committee
- ILO conventions
- SOLAS convention
- Being subject to marine audits
- Regulations under the Australian Navigation Act, 1912 and regulations under MARPOL 75/78
- STCW95
- Various Occupation, Health and Safety acts
- Code of Safe Working Practices
- The International Shipping and Port Security (ISPS) Code
- Global maritime distress safety systems
- Ballast water management as mentioned above and other mandatory rules.

There is indeed a heavy regulatory burden on the vessel even though it is fully accepted that such mandatory rules are often necessary. What is difficult is that regulators, particularly at the State or Territory Government level or port level in applying new regulations to not always understand or take into account the burden on the ship operator and importantly the crew.

The marine audits mentioned above are basically conducted under three main areas of compliance being:

- ICM code
- ISO9002 quality assurance and

- Occupational, Health and Safety legislation

The introduction of the Safety Maritime Management system under the ISM code requires a company to develop and implement safety management procedures to ensure the conditions, activities and tasks both ashore and afloat, affecting safety and environmental protection are planned, organised, executed and checked in accordance with legislative and company requirements. Third party auditors are necessary to issue and maintain a document of compliance and safety management certificate. Whilst internal verification is often scheduled for once a year, there are follow up audits if there are any non conformities noted. In addition to the ISM code audits there are usually audits of the application of ISO9002 regarding quality assurance and these are usually conducted annually. The quality management system is often used for internal application, for certification and contractual purposes and quiet rightly instils a culture of continuous quality and improvement.

Whilst acknowledging that each of the compliance systems involves the application of safe and efficient procedures, the purpose of each is viewed from a different perspective.

It is clear that Regulatory Impact Statements are not always provided and where they are provided, they appear to be a formality and yet serious questions should be raised:

a. Whether the actual regulation is required in the first place?
b. Is there a better way of doing it without regulation?
c. The implications of those regulations on the overall regulatory burden on the industry as mentioned above?
d. Is there a sunset clause?
e. Is there to be an audit in the future to determine if the objectives in the Regulatory Impact Statement have actually been met?

<u>Regulations Implementing Competition Policy</u>

Shipping Australia provides secretariat services to those parties to agreements that are registered under Part X of the Australian Trade Practices Act, 1974 (Cth) and that provide international liner shipping services to and from Australia. Thirty days after the final registration of those agreements, limited exemptions from the antitrust provisions of the Act are provided to those parties. An issue that SAL would like to raise with the Commission is the possibility of using that approach as a case study for proven cases of potential improvement in supply chains and the use of infrastructure within sea ports, for example that have a definite national benefit in terms of trade facilitation but do involve some collusive dealing or collective price setting.

Perhaps fast tracking the registration and authorisation of such arrangements by the Australian Competition and Consumer Commission could have substantial productivity benefits for trade related industries that have a direct connection with sea or air freight. It would be desirable to have strict criteria regarding which industries and what kind of behaviour would be eligible for such limited exemptions for the antitrust provisions of the Act. Ongoing behaviour would continue to be monitored by the ACCC. The current authorisation process under the Trade Practices Act is long,

costly and uncertain and this suggestion is put forward as a possible remedy where clear national interests and trade facilitation objectives are involved.

Shipping Australia would be glad for the opportunity to elaborate on this concept if so required by the Commission or on any other issue raised above.

Llew Russell AM
Chief Executive Officer
Shipping Australia Limited

SHIPPING AUSTRALIA LIMITED

MEMBERS – February 2009

AAL Shipping
ANL Container Line Pty Ltd
APL Lines (Australia)
Asiaworld Shipping Services Pty Ltd
Carnival Australia
CMA CGM
Evergreen Marine Australia Pty Ltd
Five Star Shipping & Agency Co Pty Ltd
Goodman Fielder
Gulf Agency Company (Australia) Pty Ltd
Hamburg Sud Australia Pty Ltd
Hapag-Lloyd (Australia) Pty Ltd
Hetherington Kingsbury Shipping Agency
Inchcape Shipping Services
Indian Ocean Shipping Agencies
John Swire & Sons Pty Ltd
"K" Line (Australia) Pty Limited
LBH Australia Pty Ltd
Maersk Australia Pty Ltd
McArthur Shipping & Agency Company
Mediterranean Shipping Company (Aust) Pty Limited
MISC Agencies (Australia) Pty Ltd
Mitsui OSK Lines (Australia) Pty Ltd
NYK Line (Australia) Pty Ltd
OOCL (Australia) Pty Ltd
Pacific Asia Express Pty Ltd
PB Towage
RCL (Australia) Pty Ltd
Royal Caribbean Cruise Lines
Seaway Agencies Pty Ltd
Sino-Global Shipping Australia Pty Ltd
Svitzer Australia Pty Ltd
Wallenius Wilhelmsen Logistics
Wilhelmsen Ships Service
Zim Integrated Shipping Services Ltd

Contributing members

China Shipping container liner Co. Ltd
Hanjin Shipping
Hyundai Merchant Marine
Neptune Shipping Line Pty Ltd
PT Djakarta Lloyd (Persero)
Pacific Forum Line (NZ) Ltd

Corporate associate members

ABB Grain Export Ltd
AGS World Transport
Associated Marine Insurers
Australian Maritime College
Australian Ship Suppliers Association Inc
Blake Dawson
Brisbane Marine Pilots
Darwin Port Corporation
DP World
Feliba Pty Ltd
Flinders Ports South Australia
Fremantle Ports Authority
GHD Meyrick
Holman Fenwick & Willan
HWL Ebsworth Lawyers
Impex Personnel
Macquarie Telecom
Middletons
Newcastle Port Corporation
Newcastle Stevedores
Norton White
NSW Maritime
OMC International Pty Ltd
P&O Automotive & General Stevedoring Pty Ltd
Patrick Stevedores

Corporate associate members (cont.)

Port Kembla Gateway Pty Ltd
Port Kembla Port Corporation
Port of Brisbane Corporation
Port of Melbourne Corporation
Port Phillip Sea Pilots Pty Ltd
Queensland Rail
Sea Transport Solutions
Sydney Ports Corporation
Thomas Miller (Aust) Pty Ltd
Thompson Clarke Shipping Pty Ltd
Toll Logistics
Torres Industries Pty Ltd
Tradegate Australia Limited