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Regulation Taskforce
PO Box 282
BELCONNEN ACT 2616

Dear Sirs

Re: Response to Taskforce Issues Paper by the National Bulk Commodities Group Inc

The National Bulk Commodities Group (NBCG) is pleased to provide a response to the Taskforce Issues Paper.

The NBCG is the peak national body representing Australia's dry bulk commodity shippers. The aim of NBCG is to represent the collective interests of its members on issues connected with the production, transportation, storage, loading and/or discharging and shipment of Australia's dry bulk commodities.

The principal focus of NBCG is the promotion of efficient and quality maritime services that are available to Australian shippers at internationally competitive prices.

In 2005 the national dry bulk commodity transport task is expected to be approximately 650 million tonnes – shipped internationally, domestically or imported.

In the 12-month period 1 July 2004 to 30 June 2005 there were 19,773 foreign flag vessels called at Australian ports. The dry bulk component of these calls was 8,218, which represents 41.56 per cent of all foreign flag vessel calls. To place this figure in context there were only 3,891 foreign flag container vessels calls in Australia over the same period.

A list of current NBCG members is attached.

Executive Summary

This response focuses on transport regulatory reform under the following headings:

- 1(A) Freight Transport;
- 1(B) Cabotage Arrangements for Shipping;
- 2 Security Arrangements for Seafarers; and
- 3 National Ballast Water Management Framework for Shipping.

The NBCG has identified a number of issues facing dry bulk commodity importers and/or exporters and makes a number of recommendations under each heading, which suggest that there would be

measurable economic efficiency benefits to the dry bulk commodity sector should the NBCG's recommendations be implemented.

1(A) Freight Transport

All sectors of the economy rely on transport to move their products and facilitate the provision of services. Thus long term planning and improvements in the efficiency of transport infrastructure is crucial to Australia's continued economic prosperity.

Continued economic reform of our transport system is even more important to the dry bulk commodity sector. Although much has been achieved in road and rail reform, and on the rail/port interface, this has occurred on a jurisdiction-by-jurisdiction basis. In rail we now have a multiplicity of access regimes and overlapping regulatory bodies, including:

- Too many rail safety authorities (more in fact than the number of above rail operators);
- Differing accreditation requirements within the same jurisdiction;
- Interstate rail operators having to comply with several differently based access regimes across the national rail network; and
- Transport chains within the same state jurisdiction having to deal with a variety of (uncoordinated) access regime regulators (at the state and Commonwealth levels) along different stages of the transport chain.

Road reform has also been substantial, through the extensive National Road Transport Commission's work for over a decade. The NBCG strongly supported the COAG initiative to change the NRTC to become the National Transport Commission (NTC). There are clearly still opportunities to improve further road freight efficiency, and this is an important goal given the projected doubling of the road transport task by 2020, particularly due to increased containerisation movements.

Intermodal connections are also important to the dry bulk cargo industry – and the NBCG welcomes the inclusion of these within the NTC's charter. They provide the means to transfer mineral commodities and ores from one mode to another (including into ports) and improved efficiency in this area was clearly required. The NBCG therefore welcomed the Prime Minister's Exports and Infrastructure inquiry and endorses its findings. Recent bottlenecks particularly in the coal exporting ports, but also in other areas (or imminent as in the case of timber exporting ports), reinforce the importance of efficient industry structures and regulatory arrangements.

Clearly, adequate and reliable rail and road access to key bulk commodity exporting and importing ports is a key factor in companies being able to meet rapidly growing export demand. Furthermore, in many cases ports suffer from encroachment by the surrounding community making long-term port development problematic. Addressing anticipated port entry bottlenecks and providing for adequate long-term land planning should be a top priority for the Australian Transport Council.

The long term objective of achieving competitive neutrality across the freight transport system as a whole has not precluded separate but compatible initiatives to improve the efficiency of individual transport services and their interface with other transport modes – and this should continue. However, the Productivity Commission's recommendation for a national, integrated freight transport system review, if agreed, would provide an opportunity to assess the progress and needs for further reform in other modal areas as well as in their key intermodal connections.

Recommendations:

- The NBCG endorses the Productivity Commission's Review of National Competition Policy proposal for an independent national review into the requirements for an efficient and sustainable national freight transport system, encompassing all freight transport modes and their efficient interconnectivity;

- This review should assess the progress and need for further reform in other modal areas as well as in the efficiency of intermodal connections in order to work towards the long run goal of competitive neutrality across all transport modes;
- The review should also examine and recommend how barriers to competition and efficiency in individual modes can be enhanced; and
- Assess what future institutional arrangements would give best effect to the next phase of freight transport reform.

1(B) Cabotage Arrangements for Shipping

In the absence of any change to cabotage arrangements aimed at improving maritime efficiency and reducing transport costs, NBCG supports the Government's current position on Continuous Voyage Permits (CVPs) and Single Voyage Permits (SVPs). This is particularly important given structural changes over the past 3-4 years in the industry. Fewer bulk shippers own their own ships and must rely on chartered unlicensed tonnage. To remove CVPs/SVPs or substantially change the arrangements under which Permits can be issued would be of significant concern.

However there are operational issues that can be improved. Summarised these are:

1. If a foreign flagged vessel is issued with a deficiency during a Port/State inspection, then this vessel is unable to apply for a CVP or SVP for a further six months. NBCG members suggest that such a penalty is too harsh and would prefer the decision to be more subjective using a deficiency-profiling tool and a risk analysis of the vessel and crew to determine the vessel's suitability to trade inter-State or intra-State with domestic bulk commodities.
2. That the issuance of a CVP/SVP and their accompanying visas must be undertaken in a manner that is consistent with the Navigation Act, government policy and the new security measures and which is respectful of commercial necessities as well as individual crew members.
3. When an unlicensed vessel undertakes an intra-State voyage the requirements for either a CVP or a SVP **vary** between individual States. The variance is significant with one State able to respond within 48 hours whilst another has a seven (7) day response period. Such a variance is unacceptable to the NBCG and we recommend that either the Department of Transport and Regional Services (DOTARS) assumes responsibility for the National CVP/SVP program or a uniform response mechanism is developed in conjunction with the States.
4. Federal Customs Legislation requires issuance of a DOTARS SVP (coastal trading) for exemption from "Importation of vessels" under the Customs Act. Intra-State trading does not require a DOTARS SVP (rather a RUF - Qld or DPI Coastal Licence – WA), which under the Customs Act suggests that the vessel is then being imported and duty should be paid. There are emerging intra-State trades which are compromised by this anomaly, which should be amended in State legislation or through harmonisation of State licenses with DOTARS SVP (see No. 3 above).

Recommendations:

- The NBCG would prefer the Productivity Commission's recommendation in its Draft Report on National Competition Policy to review cabotage arrangements be undertaken forthwith;
- If the Government decides to accept the Productivity Commission's final report recommendation, for a broad review of freight transport, it is vital that the importance of shipping as a transport mode is not overlooked in analysing multi-model issues. In particular, Australia must have access to an efficient transport sector both domestically and internationally to ensure it is able to reach markets in a cost-efficient manner. In this context, NBCG has been a strong advocate for the Single and Continuous Voyage Permit arrangements and would be concerned if the existing arrangements were eroded in any way;

- That a review of Australia's cabotage arrangements is undertaken through completion of the Australian Government's Legislation Review Program, as recommended by the Productivity Commission in its draft report National Competition Policy Report, 2005 or, alternatively, this form part of a broader independent national review into the requirements for an efficient and sustainable national freight transport system (encompassing all freight transport jurisdictions) as recommended by the Productivity Commission in its final report;
- If cabotage is preserved, it is very important to the Australian dry bulk commodities sector that the current policy position regarding Continuous Voyage Permit and Single Voyage Permit arrangements remains in place;
- Replacement of the penalty whereby a foreign flagged vessel that has been issued with a deficiency during a Port/State inspection is unable to apply for a CVP or SVP for a further six months with a more subjective approach using a deficiency-profiling tool and a risk analysis of the vessel and crew to determine the vessel's suitability to trade inter-State or intra-State with domestic dry bulk commodities; and
- Noting that there are currently two CVP/SVP regimes in place, which cater for unlicensed vessels trading inter-State and intra-State, the NBCG strongly supports a regime change in which applications are either processed by DOTARS or the States have a standardised regime, which will process all applications within 48 hours.

2. Security Arrangements for Foreign Seafarers

The NBCG is aware that some sections of the maritime industry are trialling the new visa system for foreign crews entering Australian ports. The NBCG understands that the trials have identified some shortcomings and we understand that these shortcomings are now being addressed. One of the NBCG concerns is the inability of electronic data to be transferred between dry bulk carriers and their agents, which will either add to the workload of ship's agents or create inefficiencies on board the typical dry bulk carrier where English is likely to be the crew's second or third language. It is useful to note that less than 0.5% of Australia's dry bulk export shipping task is handled by Australian crewed vessels.

The NBCG is aware that seafarers who commonly crew dry bulk carriers are drawn from a variety of nationalities and these crews do not always have access to consular facilities or the internet. In such cases the obtaining of an Australian visa is going to be a real challenge and has the potential to add significant costs (delays or fines) either to the ship operator or the cargo exporter/importer. Dry bulk carriers are, by their very definition, employed through the international charter market and the identity of their next port call is determined by all the complexities that make up this market. These arrangements may result in a dry bulk carrier being advised that its next port of call is an Australian port, which is less than 96 hours away. NBCG members note that there is a time scale for reporting vessel and cargo arrivals if the likely duration of the voyage is less than 96 hours. However, of concern to NBCG members are the penalty regimes for non-compliance. NBCG members note that the penalty for non compliance range up to 120 penalty units (currently \$A13,200) when the offence is committed intentionally and up to 60 penalty units (currently \$A6,600) when the offence is committed unintentionally. Whilst the NBCG has concerns about the severity of the fines, it is the mechanics of actually paying the fine which are of greatest concern. No agent will pay a fine until owners, operators or charterers have put them "in funds". Consequently the unintended result is likely to be a significant delay to the vessel and the possibility of tying-up a critical dry bulk loading/discharge berth.

The NBCG also has concerns regarding the appropriateness of the Cargo Management Re-engineering (CMR) and Integrated Cargo System (ICS) as they apply to the dry bulk commodity sector. The NBCG understands that the Australian Customs Service (ACS) has consulted with representatives of container shipping, but has not consulted with the dry bulk sector. The NBCG is prepared to work co-operatively with ACS to ensure an acceptable resolution is found to those issues that are of concern to NBCG members.

The NBCG would like to be briefed on how DIMIA is going to deal with crew members who fail the security check. This issue is important, because there are significant commercial considerations resting on DIMIA's response.

The NBCG recognises that the Australian Government's commitment to national security is very high. It is of course necessary to maintain a strong focus on the preparedness and responsiveness of Australia's transport security regime to ensure Australia's systems are positioned to meet emerging threats. The challenge is that this is an endless task.

In order to achieve outcomes in a cost effective manner, while minimising disruption to commerce and trade, the NBCG agrees with the Government's view that initiatives should be based on a risk-management approach and achieve the correct balance of responsibilities between the Commonwealth, States/Territories, industry and broader community.

Recommendations:

- The policy regime put in place should not place additional financial penalties on the dry bulk cargo sector through:
 - crews being confined to their vessel;
 - berthing delays; or
 - an infringement notice being issued.
- Every effort should be made to make the reporting by the Master consistent with other reporting requirements in place – to minimize and streamline reporting requirements (and thereby reduce the compliance burden);
- That ACS and the NBCG meet to work co-operatively to find solutions to the myriad of problems NBCG members have with the current draft of CMR and ICS;
- That DIMIA's arrangements for dealing with foreign seafarers who fail their visa security check are clearly understood by all industry participants; and
- The charge for Australian crew visas should be waived for all foreign crew members.

3. National Ballast Water Management Framework for Shipping

The NBCG supports the implementation of a nationally consistent, regulatory framework for ballast water management aimed at managing the risk of marine pest incursions and translocations. This framework should also be consistent with the International Maritime Organisation's (IMO) Ballast Water Convention and other existing international maritime regulation frameworks.

It is concerning that development of the national system under two Council of Australian Governments' Ministerial Councils has been so slow and that Victoria has decided from 1 July 2004 to introduce its own approach ahead of a national system. A number of other jurisdictions have also considered introducing their own approaches. Even if they aim to introduce a system that is consistent with the international convention agreed at the IMO last year, lack of coordination and harmonisation of policy approaches is a real possibility.

The shipping industry is a well-organised global industry and operates within a highly regulated environment established by the IMO and implemented by Flag States. Global consistency in regulation is of paramount importance to shipping operations and services and is achieved through consistent national implementation of international conventions.

Understanding obligations and requirements under IMO regulations (and thence under Australian law), is a fundamental aspect of ship operation. The industry has a proven record of compliance with these existing safety and environmental regulations.

The Australian Quarantine and Inspection Service is to be commended for its implementation and management of Australia's mandatory ballast water requirements since 1 July 2001, which have enabled industry to demonstrate its ability to comply with the Australian requirements.

The NBCG supports a non-prescriptive model to deliver an acceptable balanced outcome in line with the objective of the IMO Ballast Water Convention and Australia's implementation of this Convention. Other options are far more invasive, more expensive and administratively complex. Foreign flag shipping, inter- and intra- state movements of Australian flag shipping have been made aware of the implications of any failure to observe State or Federal quarantine requirements, or any other requirement by law.

The NBCG also supports a principled approach to charging for quarantine inspections under the national system. However, again, it is likely that individual states and the Commonwealth will have different charging regimes. Thus, for example, a foreign flag vessel visiting Australia would have to pay a charge on its first visit to cover its international ballast water. Then on subsequent visits to other ports, it would have to pay a charge to each state/Northern Territory jurisdiction.

Principles that should apply to a charging regime cover:

- i. Any Australian regulations and procedures relating to the ballast water levy should be consistent with the IMO Convention;
- ii. The Australian approach should impose consistent requirements and regulations on international and coastal shipping;
- iii. There is a single management system that does not differentiate between international and domestic translocation of ballast water;
- iv. The levy should be administered in the most efficient and least cost manner;
- v. It will apply to all commercial trading ships (i.e. foreign and Australian flagged vessels) that take up and discharge ballast water around the Australian coast, calculated on the net registered tonnage of the ship and, given the precedent already created in relation to the AMSA managed levies:
 - a. Will be collected by Customs;
 - b. Will be charged quarterly on the basis of one charge only per ship regardless of the number of port calls in that quarter; and
 - c. Will be solely used for ballast water management purposes.
- vi. If a vessel fails a ballast water quarantine inspection and further detailed inspection is required, this will be on a specific 'fee for service' basis, charged direct to the vessel; and
- vii. Appropriate exemptions, e.g. for Defence, Commonwealth, State and other vessels that do not carry ballast water, will be developed along the lines of the previous ballast water levy.

Recommendations:

- The NBCG supports adoption of a nationally consistent and harmonized, non-prescriptive model for national ballast water management to minimize the risk of marine pest incursion or translocations, rather than other more prescriptive options; and
- A single national charge should be levied on a quarterly basis for ship movements around the Australian coast rather than each jurisdiction having its own arrangements and separate charging requirements.

Please contact the undersigned should the Taskforce require further explanation and/or detail of the comments and/or recommendations contained in this response.

Yours faithfully
For National Bulk Commodity Group Inc

A handwritten signature in black ink, appearing to read "Dale Cole". The signature is fluid and cursive, with the first name "Dale" and the last name "Cole" clearly distinguishable.

Dale Cole
Executive Chairman

NATIONAL BULK COMMODITIES GROUP INC

List of Members:

AWB Limited

BHPB Freight Pty Ltd

Minerals Council of Australia

Queensland Alumina Limited

Queensland Sugar Limited

Rio Tinto Shipping Pty Limited

The Grain Pool of Western Australia

Xstrata Copper Refineries Pty Ltd

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