



Australian Shipowners Association

INTERNATIONAL COMMISSION ON SHIPPING

Submission of Australian Shipowners Association

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Australian shipping – and shipping in Australia, operates within a regulatory framework superintended by flag state and port state control regimes. In addition, it is well known internationally that the ITF inspectorate regime is actively maintained by the Australian maritime unions in Australia's ports.

Flag state supervision is an issue of particular relevance in Australia at present. In contrast to steps taken by governments of G7 and OECD countries with a shipping presence (except Czechoslovakia and New Zealand) in respect of the shipping industries of their countries, the Australian government has effectively announced its intention not to provide fiscal measures to operators of vessels flying the Australian flag. This means that (almost) any flag other than the Australian flag offers more attractive fiscal and tax regimes to ship operators. Although the *Shipping Registration Act 1981* makes Australian registration mandatory for Australian owned ships, operators take steps to ensure ships operated by Australians are owned offshore, thereby accessing more attractive fiscal regimes elsewhere. The Australian government has indicated its intention to amend the Shipping Registration Act to remove the mandatory Australian registration of Australian owned ships.

The consequence of the Australian government's encouragement of the adoption of foreign registration of Australian operated ships is that the role of the Australian Maritime Safety Authority (AMSA) as a flag state regulator is diminishing. The Australian shipping industry has at times in the past complained of higher standards of compliance being imposed on Australian flag ships by AMSA and the cost burden attendant upon those higher standards.

The AMSA flag state role is diminishing with the government's encouragement to move away from the Australian flag. The shift to foreign flags takes more formerly Australian registered ships out of the Australian flag state control jurisdiction and into the port state control ambit. It is well established that AMSA's port state control activity has influenced a more fastidious approach to compliance. Adoption of the ISM Code has also created an increased awareness of safety regimes. Together with an increasing public awareness of marine environmental issues in Australia, an improved compliance regime appears to be emerging.

The "Kirki" incident off Western Australia in 1991 increased public awareness of shipping environmental issues. The "Laura D'amato" incident in Sydney in 1999 also maintained shipping near the forefront of public awareness. It is ironic that the European Union response to the "Erika" incident might have the effect of displacing older tonnage from European markets into other areas, including Australia.

One of the shifts in perceived liability in the quality shipping debate has been toward charterers. During the early 1990's in Australia, the glare of public opinion was directed to charterers of poor quality shipping. Many might recall the charterer of a vessel involved in an incident, but fewer

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might be able to nominate the owner or the flag of the vessel. It is appropriate to bring the users of vessels to account but inappropriate to allow ship operators to in any way abrogate their responsibility for safe ship operations.

No one in the road, rail or aviation transport industries would expect users to take a role in maintaining safety standards through market pressure on transport providers. Users of marine transport services create the demand curve for such services; the ship operators who create the supply curve are those who are in the marine transport business and it is they who have immediate responsibility for the safety of transportation systems.

The market forces which suit users of shipping and the counter-veiling market forces which should allow the cost of safe operations to be absorbed by providers of shipping are, if not mutually exclusive, at least incompatible. It is difficult to see how reliance on a product of incompatible market forces can produce a positive safety outcome.

Consequently the primary onus should be on shipowners to supply quality shipping services. This is an almost self-evident proposition hindered in its achievement primarily by the economic advantage of non-observance of safety standards.

In Australia there is a view within government that if other countries are 'stupid' (description used by Australian Treasury official for such nations) enough to provide fiscal measures for their shipping industries, Australian exporters should take advantage of their stupidity. This is the regulatory abrogation. By actively discouraging an Australian flag shipping industry, the government of the nation which is the fifth-largest shipping market in the world directly divests itself of the most effective means of maintaining shipping standards in our own waters.

If a nation has an active national flag fleet it has influence in international circles, it has a domestic regulator underpinned by performance as a regulator, not merely as a policing agency. In the absence of a major coast-guard function, a port state policing role would be substantially underpinned by a significant flag state regulatory role. The Australian government actively militates against this position.

The active discouragement of an indigenous shipping industry and the active promotion of a nation as a user of shipping services promotes the circumstances in which poor quality shipping can best be expected to thrive. Australia is a case in point. Charterers cannot – by reason of economic forces, and should not – they are a service user not provider, be charged with responsibility for quality of shipping likely to enter Australian waters.

The net result of Australia's current mix of policy commissions and omissions is the one least likely to promote quality shipping. No port state control authority is realistically capable of creating an impermeable barrier to entry of sub-standard ships. Just as a police force in a metropolis cannot hope to stamp out all crime, AMSA cannot hope to catch all poor ships. Besides, in a user-pays environment the cost to the shipping industry of an AMSA so upgraded as to catch all questionable ships would be impracticably high: the users of shipping services could not afford the price.

The Australian Shipowners Association submits that:

1. Australia's ability to circumscribe the activities of poor quality shipping relies on industry regulation by adherence to IMO and other standards;
2. Australia's domestic policies are inimical to the achievement of a safe-shipping objective espoused by the Australian government.

We would be happy to discuss this matter further if requested to do so.