



# Senate Rural and Regional Affairs and Transport References Committee

## Increasing use of so-called Flag of Convenience shipping in Australia

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## 1. Introduction

This submission is made on behalf of Maritime Industry Australia Ltd (MIAL), previously known as the Australian Shipowners Association. MIAL represents Australian companies which own or operate:

- international and domestic trading ships;
- Floating Production Storage and Offloading units;
- cruise ships;
- offshore oil and gas support vessels;
- domestic towage and salvage tugs;
- scientific research vessels; and
- dredges

MIAL also represents employers of Australian and international maritime labour and operators of vessels under Australian and foreign flags.

The trading fleet or 'bluewater' Members of MIAL 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, hence some of MIAL's Members are very large cargo interests.

MIAL Members participating in domestic trade utilise the existing regime of General Licenses, Temporary Licenses and Transitional General Licenses. MIAL Members are active in dedicated international trades under both Australian and foreign flags.

MIAL provides an important focal point for the companies who choose to base their shipping and seafaring employment operations in Australia.

MIAL represent the collective interests of maritime businesses, primarily those operating vessels or facilities from Australia.

MIAL is uniquely positioned to provide dedicated maritime expertise and advice, and is driven to promote a sustainable, vibrant and competitive Australian maritime industry and to expand the Australian maritime cluster.

## Executive Summary

International shipping is governed by international law, including a number of key international conventions. Among these key conventions are the *Convention on Safety of Life at Sea (SOLAS)*, the *Convention on the Prevention of Pollution from Ships (MARPOL)*, the *International Convention on Standards of Training, Certification and Watchkeeping (STCW)* and the *Maritime Labour Convention (MLC)*.

These conventions have a high rate of international acceptance and are embodied into national laws worldwide and enforced through a structured Flag State inspection and verification regime by the country to which the ship is registered. Enforcement of convention requirements in another country's ports is via Port State Control activities which assists in upholding a level playing field with regard to safety, environmental compliance and seafarers' welfare and ensuring that there is no advantage to operating substandard vessels. The important principle of 'no more favourable treatment' which applies in some conventions, ensures that a ship which is registered in a country that is not a party to that convention will be treated as though it were required to comply with the convention when visiting nations that have ratified the convention.

The 1992 Ships of Shame Inquiry report identified a number of shortcomings in the Australian maritime compliance framework which allowed a significantly greater number of substandard ships to call at Australian ports than do now. Since that time a significant amount of progress has been made to better target resources and improve the Australian maritime compliance framework, resulting in an overall improvement on the quality of vessels visiting Australian ports and a reduction in the risk to the Australian environment and community.

To assess vessel quality only against the flag under which it flies would be to take an overly simplistic and counterproductive approach. Of greater relevance to vessel quality with regard to safety, environmental compliance and seafarers welfare, is the quality of the operator.

There is a very strong commercial imperative to both operate and charter vessels of a very high quality. Safety and environmental compliance issues can have a significant impact on company reputation. Statistics on international vessel compliance history are readily available to charterers through the various ship vetting databases and services, and can impact on whether or not a vessel is hired.

## a.) The effect on Australia's national security, fuel security, minimum employment law standards and our marine environment.

**National Security:** The international convention for maritime security is the *International Ship and Port Facility Security Code*, commonly referred to as ISPS. ISPS is an amendment to the *Safety of Life At Sea Convention* (SOLAS). Vessels operating in Australia, wherever they are registered, are subject to the ISPS Code. The flag under which a vessel is registered does not strongly indicate a potential security risk; there are a number of vessels trading in Australia that bear the flag of open registry or "flag of convenience" states that are manned by Australian seafarers. ISPS compliance is generally monitored, in the case of foreign flagged vessels, by the Australian Maritime Safety Authority (AMSA) as one element of Port State Control (PSC). The *Maritime Transport and Offshore Facilities Security Act 2003* provides for inspection and enforcement functions under ISPS in Australia.

**Fuel Security:** MIAL has no specific input to provide on the matter of fuel security.

**Minimum Employment Law Standards:** The minimum standards for conditions of employment are dependent upon the flag of registry of the vessel, the contract between a seafarer and their employer, the requirements of the *Fair Work Act 2009* (where required) and are additionally subject to the requirements of the *Maritime Labour Convention* (MLC). AMSA have only recently begun incorporating MLC requirements into PSC inspections. In 2014 AMSA received 114 MLC related complaints pertaining to breaches in living and working conditions on board vessels. Following inspections relating to these complaints AMSA issued deficiencies against 56 vessels and detained 8 vessels.

**Marine Environment:** The standards governing environmental compliance are matters of international law, and are not dependent on which flag a vessel sails under. The primary regulatory instrument for the environmental performance of ships is the *International Convention for the Prevention of Pollution from Ships* (MARPOL). MARPOL's requirements apply regardless of which flag a vessel is registered under and are enforced in Australia as part of AMSA's PSC regime.

As has previously been mentioned, there are a number of Australian manned and operated vessels that are registered under open registries or "flags of convenience"; this does not affect their environmental performance or change their obligations under Australian law. Other regulatory instruments affecting the protection of the marine environment include the *International Convention on the Control of Harmful Anti-fouling Systems on Ships*, the *International Convention on Civil Liability for Oil Pollution Damage*, the *International Convention on Civil Liability for Bunker Oil Pollution Damage* and the *International Convention for the Control and Management of Ships' Ballast Water and Sediments*. These instruments are again applicable to ships in Australia's jurisdiction regardless of where those ships are registered.

b.) The general standard of “Flag of Convenience” vessels trading to, from and around Australian ports, and methods of inspection of these vessels to ensure they are seaworthy and meet required standards.

Vessels trading or operating to, from and around Australia are subject to inspection. Vessels registered in Australia will be subjected to Flag State inspection, while vessels flagged overseas are subject to PSC inspection. In both cases the inspection will be carried out by AMSA to ensure the vessel is in compliance with international conventions for safety, environmental performance, crew training and qualifications, vessel condition as well as living and working standards on board. AMSA have a number of powers that can be used to ensure compliance. Generally AMSA seeks to act in such a way as to improve performance rather than simply forcing non-compliant vessels elsewhere. Many deficiencies identified during an inspection will be remedied immediately, others may be severe enough to warrant the detention of the vessel until the deficiency has been rectified. In extreme cases, where the usual enforcement methods are not yielding improved behaviour, AMSA can use new powers under section 246 of the *Navigation Act 2012* (Australia’s principal maritime regulatory instrument) to forbid a vessel from entering or using Australian ports. This occurred twice in 2014, with two vessels banned from using Australian ports for three months.

AMSA publish the results of PSC inspections on a yearly basis. The results include deficiencies and detentions correlated against vessel types, vessel registries, and individual Recognised Organisations (classification societies). The annual report also includes detailed analysis of the findings along with any identified safety trends and areas in need of improvement. AMSA’s inspection results show that Australian flagged vessels over the past five years have tended to have slightly more deficiencies per inspection than did foreign flagged vessels visiting Australia. Foreign flagged vessels were, on the other hand, slightly more likely to be detained than Australian flagged vessels. The most important conclusion to draw from this data is that AMSA, in its capacity as port state and flag state inspector, pay close attention to all vessels operating to, from and within Australia regardless of where they are registered and AMSA have not identified a strong correlation between open registries (so-called “flags of convenience”) and vessel performance. Some particular flags are identified as having below average performance, but these do not include any of the large open registries.

Virtually all flag states have ratified the same international conventions, and a vessel arriving in Australia registered under a flag that had not ratified many those conventions would be subject to the same requirements as a vessel sailing under a registry that had. This is because some conventions contain “no more favourable treatment” obligations, meaning the Port State is obliged to inspect a vessel against the convention requirements, regardless of whether the Flag State of the vessel has ratified the convention.

There are also cooperative arrangements between AMSA and its equivalent organisations worldwide to share information and conduct joint targeted campaigns on compliance. In Australia’s region this function is served by the Tokyo MOU and the Indian Ocean MOU. This cooperation and sharing of data assists regulatory bodies in better utilising their resources by allowing them to scrutinise vessels with poor performance records while sparing known good performers from excessive interference.

To summarise, sophisticated and effective methods for enforcing compliance with Australian and international standards already exist. AMSA, who are responsible for enforcing those standards have not identified a strong correlation between whether a vessel is or is not Australian flagged and its safety and environmental performance. As one witness quoted in the *Ships of Shame* inquiry stated:

*“...behind every substandard ship lies a substandard operator”.*

It is worth noting that one the strongest drivers for improved safety and environmental performance comes from the charterers, that is, the cargo owners and the users of ships. This could also be said for terminal operators. There is a strong commercial incentive that drives quality ship operation, regardless of flag – no charterer or terminal operator wants to be associated with poor safety and environmental performance.

This commercial imperative has given rise to a focus on ship vetting and resulted in development of a number of international ship vetting systems or databases (e.g. ‘RightShip’ and SIRE) which charterers, in combination with their own auditing and quality assurance processes across the dry bulk and bulk liquid industries, use to help ensure they charter only quality ships.

In the area of oil and refined petroleum products carriage, tankers are usually subject not only to inspection by their flag state and the port state they are visiting, but will also be regularly audited by representatives from the cargo interests, for instance the oil major whose cargo is being transported. This is called the Ship Inspection Report Program (SIRE), and is one safety initiative introduced by the Oil Companies International Marine Forum (OCIMF). A vessel with a poor track record for safety or environmental performance can quickly find itself in the position of being unable to secure a cargo to transport. An ageing vessel is also less likely to be accepted by a charterer.

### c.) The employment and possible exposure to exploitation and corruption of international seafarers on “Flag of Convenience” ships.

MIAL note that, as with vessel safety and environmental performance, the link between poor performance and a vessel’s flag of registry is tenuous at best. There are vessels to, from and within Australia which are registered under open or “flag of convenience” registries that are entirely manned by Australian seafarers with wages and conditions negotiated with the seafarer unions in the form of enterprise agreements and are usually well in excess of relevant industry award standards.

The standards and conditions of employment for international seafarers are dependent upon the contract between a seafarer and their employer, requirements of the Flag State and potentially an International Transport Workers’ Federation (ITF) agreement. Conditions are now additionally subject to the requirements of the MLC, which came into force 20 August 2013. AMSA have only recently begun incorporating MLC requirements into PSC inspections, with 2014 the first full year of MLC compliance checks; in 2014 AMSA received 114 MLC-related complaints pertaining to breaches in living and working conditions on board vessels. Following inspections relating to these complaints AMSA issued deficiencies against 56 vessels and detained 8 vessels.

MLC has, to date, been ratified by 65 countries representing 80% of the world’s tonnage. Shipowners were engaged with the creation of the MLC and supported its adoption internationally, and overall, considered it a positive step, assisting to create a level playing field.

MIAL fully supports the ongoing rigorous enforcement of MLC requirements as part of AMSA’s PSC and Flag State inspection regime.

d.) Discrepancies between legal remedies available to international seafarers in state and territory jurisdictions, opportunities for harmonisation, and the quality of shore-based welfare for seafarers working in Australian waters.

MIAL recognises that discrepancies exist between the states and territories on a number of issues affecting the shipping industry, and supports harmonisation.

MIAL has a long-standing relationship with various seafarers welfare organisation and is a member of the Australian Seafarers Welfare Council, and believes that those organisations are better positioned to address the issue of shore-based welfare for seafarers visiting Australia.

e.) Progress made in this area since the 1992 House of Representatives Standing Committee on Transport, Communications and Infrastructure report *Ships of Shame: Inquiry into Ship Safety*.

The two decades following the Ships of Shame inquiry have seen huge improvements in safety and environmental performance as well as the treatment of seafarers, though this is not to say that there is no room for further improvement in all areas. To cite specific examples of improvements since 1992:

**Improvements in Port State Control:** While PSC already existed in 1992 the system has come a long way since then. Two PSC MOUs have been created to enable data sharing and collective enforcement in Australia's region, the first being the Tokyo MOU in 1993 and later the Indian Ocean MOU in 1999. The collaborative approach the MOUs allow has greatly assisted in the detection and correction (and where needed, removal) of deficient vessels in Australia's jurisdiction and elsewhere in the region. As of 2013, Section 246 of the *Navigation Act 2012* allows AMSA, as Australia's PSC inspector to forbid vessels who fail to improve their performance from entering Australian ports, though this power is rarely required.

**International Safety Management Code (ISM):** The ISM Code was introduced into SOLAS as Chapter IX in 2002. The ISM Code is a means for ensuring compliance with existing safety regulations, and mandates the creation of a Safety Management System (SMS). The SMS includes such features as internal and external auditing requirements, defined procedures (available in the working language of the ship on board and ashore) to deal with routine and emergency situations, and a new role called the Designated Person Ashore whose sole purpose is to act as a conduit to the highest levels of company management if the personnel on board the vessel do not believe that their safety concerns are being acted upon. ISM compliance is checked as part of AMSA's PSC inspection regime.

**Enhanced Survey Programme (ESP):** ESP (the resolution was adopted in 1994) was in large part a response to the same worldwide spate of ship losses that prompted the 1992 Ships of Shame inquiry. The ESP recognised and sought to address the causes of bulk carrier and tanker sinking events with new inspection requirements, specific to those ship types that become progressively more stringent as the vessel ages. Particular attention is paid to steel thickness in the hull and overall structural integrity, and once a vessel reaches a certain age the vessel must be inspected in drydock twice in every five years instead of once. In addition to ensuring that a vessel is adequately maintained the ESP's survey requirements make operating aged vessels less and less profitable as time passes, creating a financial incentive to replace ships once they reach the age where ESP requirements come into effect.

**Changes in Vessel Design:** Bulk carrier losses such as those seen in the 1980s and 1990s were in part due to unforeseen deficiencies in ship design, with bulk carriers in heavy seas vulnerable to flooding

in the forward-most cargo hold followed by subsequent holds flooding and the vessel breaking up and sinking rapidly. New rules governing structural requirements for bulk carriers over 150 metres in length were adopted in 1997 to address these faults. On the oil tanker front, single skin oil tankers are no longer present in Australian operations, with double hull designs now mandatory.

**Classification Society performance:** Classification societies (Class) suffered a perceived drop in quality as they stopped being associated entirely with their national registries and instead began competing for customers registered under flags all over the world. This competition inevitably led to a relaxation in standards from some societies, and poor vessel operators, especially in the 1980s and 1990s, sought to avoid Class intervention by “class hopping” from one Class at another. This was in part addressed when the International Association of Classification Societies (IACS) introduced the Transfer of Class Agreement (TOCA), which ensured that a vessel leaving one classification society for another would not escape inspection obligations, and that the entire Class history of a vessel would be made available to the new classification society. Of particular relevance to the 1992 Ships of Shame inquiry, older bulk carriers and oil tankers (subject to the requirements of the Enhanced Survey Programme) are subject to immediate inspection upon transferring to a new classification society, and this inspection will include measurements of steel thickness and structural integrity, among other survey requirements.

**Training and Competence:** In the Ships of Shame inquiry the following remark was made:

*“It has been generally recognised that a good crew may save a bad ship in a time of crisis and alternatively, a bad crew can ruin a good ship. It is undeniable that the quality of crew training is a central factor in maintaining ship safety.”*

The Standards for Training, Certification and Watchkeeping Convention 1978 (STCW-78) were in effect at the time of the Ships of Shame Inquiry. Since then the STCW Convention has been revised twice, with the STCW-95 Code taking effect in 1997 and the Manila amendments to STCW-95, which are currently the subject of a 5 year transition and will be fully implemented by 2017. Some of the many changes to STCW from the time of the *Ships of Shame* inquiry include:

- Improved measures to prevent the use of fraudulent certificates of competency (a key concern in the Ships of Shame inquiry), including establishment of the “White List”, comprising nations that have demonstrated full compliance with the requirements of STCW-95;
- New requirements to address seafarer fatigue through defined hours of work and rest;
- New training requirements for specific vessel types such as oil and LNG tankers;
- Vessel familiarisation requirements for personnel joining a new vessel or re-joining after a prolonged absence, along with basic safety training that includes fire-fighting, basic first aid, personal survival techniques and social responsibility;
- Crowd Control competency for personnel aboard vessels carrying passengers;
- Security training for all personnel;
- Defined maximum blood alcohol limits for personnel on ships of any flag;
- And of particular relevance to the *Ships of Shame* inquiry, amendments to STCW in 1998 relating to cargo securing, loading and unloading aboard bulk carriers aimed at reducing structural stress and failure of the sort too often seen in the 1980s and 1990s.

**Communication Difficulties with Non English Speaking or Multi-lingual Crews:** This continues to be an issue. The IMO adopted the Standard Marine Communication Phrases (SMCP) in 2001 to try to address communications issues internal and external to vessels. Crew comprising a number of nationalities with differing languages continue to be common, with a language barrier between officers and ratings particularly common. STCW requires that an understanding of the SMCP be demonstrated before a certificate of competency can be issued to anyone wanting to serve as an



officer in charge of a navigation watch on vessels of 500 gross tonnage or above. It is also a requirement that work procedures, safety documentation and documentation relating to employment conditions be made available in the ship's working language or language understandable by all crew.

While it would be incorrect to claim that issues related to language barriers aboard ships have been solved, it is true that considerable progress has been made.

**Treatment of Seafarers:** The *Ships of Shame* inquiry highlighted a number of reports of ill-treatment of seafarers. While there is little doubt that there are still bad operators, unscrupulous manning agencies and officers who fail in their duty of care, it is true that progress has been made. The MLC, which entered into force in Australia in 2013 provides minimum standards and legal recourse for ill-treated crew. Vessels which fail in their obligations under MLC can and have been detained in Australia. The Australian Transport Safety Bureau's (ATSB) REPCON reporting system also allows seafarers to anonymously report instances of substandard training, on board language difficulties, inadequate safety procedures or equipment or substandard maintenance to ATSB, who can share data with AMSA where necessary.

**Automatic Identification System (AIS):** Mandated by the IMO in 2002 and implemented in Australia, AIS provides a means for ship to shore and ship to ship communications and allows for automatic and continual monitoring of vessel identification and location on the Australian coastline by AMSA.

AIS increases vessel situational awareness and increases the ability of AMSA to intervene where necessary, take preventative action and enhances enforcement capabilities.

## f) Any related matters

Other matters relevant to this inquiry go to the contractual relationships between the parties, i.e. the cargo seller, the cargo purchaser and the shipowner.

It is important to note that the majority of Australian exports occurs under 'Free on Board' (FOB) arrangements. An FOB arrangement requires that the cargo buyer chooses the ship that will be used, not the Australian cargo seller. This is important because it is the cargo buyer who pays the costs of freight (including chartering and insurance) and accepts the risk associated with the cargo transport once loaded onto the vessel, increasing the commercial imperative to minimise risk by chartering high quality ships.