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SAL Submission to Senate Inquiry into the Increasing use of so-called Flag of Convenience shipping in Australia.

Shipping Australia Limited (SAL) is grateful for the opportunity to make a submission to this inquiry. Our submission recognises that Australia and Australians are absolutely dependent on foreign flag shipping for our economic survival. We emphasise that numerous developments in international shipping regulation in the past 20 years have made international shipping safer, more environmentally responsible and that conditions for international seafarers are more transparent and significantly improved. In any industry, despite a vast majority of conscientious and compliant operators, there are likely to be some unscrupulous participants. The Australian Port State control system, administered and applied by the Australian Maritime Safety Authority is effective in enforcing ship safety and crew welfare provisions of international conventions. It provides an effective safeguard to detect deter and if necessary detain or banish non-compliant ships from Australian waters, irrespective of flag.

Shipping Australia Limited (SAL) is a peak shipowner association with 36 member lines and shipping Agents and 50 corporate associate members, which generally provide services to the maritime industry in Australia. Our member lines are involved with over 80 per cent of Australia's international trade and car trade as well as over 70 per cent of our break bulk and bulk trade. A number of our members are also actively engaged in the provision of coastal cargo services to Australian consignors and consignees.

A major focus of SAL is to promote efficient and effective maritime trade for Australia whilst advancing the interests of ship-owners and shipping agents. SAL also provides secretariat services to the many liner companies and agencies that are members of conferences, discussion agreements, consortia and joint services that have their agreements registered under Part X of the Australian Competition and Consumer Act 2012. These agreements specifically seek to facilitate and encourage growth of Australia's liner shipping trades.

SAL is disappointed that some of the fundamental concerns leading to this inquiry appear to be based on out of date perceptions and misinformation. We trust that our submission will go some way to correct these. Shipping can be a dangerous business; the fact that over 5,000 foreign flagged ships make more than 25,000 port calls in Australia each year with very few serious accidents or incidents is testament to the effectiveness of the international and national maritime regulatory (safety and security) framework under which these ships are governed.

1. Flag of Convenience (FOC)

1.1 Interpretation

- 1.2 SAL notes that the title of this Inquiry refers to the “*increasing use of so-called Flag of Convenience Shipping*”. The term “flag of convenience” is anachronistic, and its use dominated by the International Transport Workers Federation (ITF) and associated unions. The term is not used by the United Nations, the International Maritime Organisation (IMO) or the International Labour Organisation (ILO).
- 1.3 This archaic concept initially tracks back to the 17th century when English fishermen off Newfoundland adopted the French flag to avoid fishing restrictions imposed by Great Britain and later by US merchant vessels that flew Portuguese flags during the War of 1812 to avoid difficulties with the British. Later in the 1940’s, the ITF pursued a movement against US shipping companies utilising Panama and Liberia flags.
- 1.4 As the term ‘Flag of Convenience’ has no agreed definition, this submission uses the term “Open register” to classify ships that are registered in a country other than which the owner of the ship may be located.
- 1.5 With the eight largest national fleets operating under open register and comprising 64 per cent of the world merchant fleet, SAL believes that an incorrect classification and assessment has been made to describe such ships. These ships have been providing essential services carrying Australian sea freight for more than fifty years.

2. Competitiveness of Open Registry Ships

- 2.1 More than 72 per cent of the world fleet is flagged in the country other than its owner and when considering the viability and history of Australian flagged shipping, it is important to remember that there has only been an Australian Shipping Register since January 1982. Before that time, an Australian owned ship was a British ship, and was registered in accordance with the *British Merchant Shipping Act 1894*.
- 2.2 In the last 20 years it is well known that there has been a progressive decline in the number of Australian flagged vessels. The reasons for this decline may be attributed to the globalisation of world markets, where a modern ship offer services to every market around the world regardless of the place where the ship is registered and where the shipowner is based. Policies adopted by flag states on any issue affecting the efficient operation or running cost of a ship (e.g. fiscal or crewing matters) will affect the competitiveness of its ships and the attractiveness of that country’s shipping register.
- 2.3 International sea freight to and from Australia has increased in the last twenty years by more than two and half times. It is evidenced by the small number of Australian flagged ships that

registering and managing ships in Australia is not a feasible and competitive option for shipowners. Almost all of Australia's international sea trade is carried by foreign flagged ships, the vast majority of these ships are registered in open registries. This is a global phenomenon and Australia is part of the global marketplace.

- 2.4 However, Australian maritime educational institutions have for some time demonstrated their proficiency and competitiveness in attracting foreign seafarers from developing countries and providing world class maritime competency training. These foreign seafarers are known to then proceed to demonstrate these competencies as crew members of foreign flag ships, including open registries.
- 2.6 SAL considers that the Australian national governance and business arrangements for the registration and management of ships do not promote substantial advantages (both nationally and internationally) when compared against its competitors.
- 2.7 SAL is supportive of any initiatives taken by governments in reviewing the existing registration and ship management arrangements to make an Australian shipping register internationally competitive.

3. Effect on Australia's National Security

- 3.1 Following the terrorist events of 11 September, 2001 concerns in relation to the security at port facilities and on-board ships resulted in the IMO developing enhanced security measures. These were included as amendments to the Safety of Life at Sea Convention, 1974 (SOLAS Convention) - Chapter XI-2 to which Australia is a party. The security framework established under the *International Ships and Port Facilities Security Code (the Code)* and Australia's *Maritime Transport and Offshore Facilities Act 2003* has been in effect since July 2004.
- 3.2 Australia's intelligence agency – ASIO, promulgates periodic sectoral threat assessment advising maritime industry participants of the prevalent security risks which are then accordingly reflected in the relevant maritime security plans.
- 3.3 Since the introduction of the above arrangements, compliance has progressively improved with security risk based inspections administered by the Office of Transport Security for *all* foreign flagged vessels. Cruise ships and associated facilities are subjected to even greater security screening measures and targeted inspections due to their assessed risk profiles.
- 3.4 Since 2003, improvements have been made in the security of seafarers' identification via the *Seafarer's Identity Document (SID) Convention* which strengthens amongst other things, the physical aspects of the SID against falsification, reliability in identifying the holder as the seafarer to whom it was issued and ability to query for more details from issuing nations.
- 3.5 Australia's introduction of the Maritime Crew Visa (MCV) in 2008, administered by border protection agencies, further strengthens Australia's border integrity and strikes a balance between national security interests and the demands of the shipping industry. In granting an MCV to a seafarer, character criteria includes an assessment of, *inter alia*:
 - criminal record (past and present);
 - risk to Australian national' security;

- association with the spread of weapons of mass destruction

3.6 SAL acknowledges that the international movement of ships, freight and personnel does create some level of national security risk, however we are not aware of any evidence that open register ships present a higher threat level than other national or foreign flagged vessels. Since July 2004, SAL is not aware of any maritime security related instance where Australia's national security has been threatened or the security level raised as a consequence of foreign or open registry ships or their crew trading in Australian waters.

3.7 SAL considers that the matters relating to national security are adequately addressed and monitored by the security intelligence agencies, as mentioned above.

4. Effects on fuel security

4.1 Australia is dependent on imported oil and refined fuel products which are routinely carried by foreign flag ships many from open registries. However, the Australian Government has an entire department dedicated towards energy security. In partnership with State and Territory Governments and fuel supply industry representatives, established contingency plans exist along with rehearsed powers under emergency legislation in the unlikely event of a national liquid fuels emergency.

4.2 These contingency plans are managed by the National Oil Supplies Emergency Committee (NOSEC), which is made up of Commonwealth (Chair), State and Territory government officials and Australian liquid fuel industry representatives.

4.3 In 2014, the Commonwealth Department of Industry and Science conducted review of market resilience to oil supply disruptions and examined the levers Australian suppliers use to provide resilience in their supply chains and how these are used to mitigate disruption events.

4.4 In the event of a global conflict open register vessel are less likely to be requisitioned by Governments than flag state ships, leaving them available for international trade.

4.5 SAL believes that adequate strategic risk mechanisms exist for the management of national liquid fuel emergencies and no reports or inquiries into Australia's fuel security have recommended the use of Australian flagged vessels as a measure to increase the reliability or resilience of Australia's fuel supply.

5. Employment and possible exposure to exploitation and corruption of seafarers on FOC ships

5.1 The introduction of the Maritime Labour Convention 2006 (MLC) has provided the appropriate regulatory framework for the governance of employment conditions of seafarers, including the principle of a minimum wage which is now referenced in the Convention. Like Australia, open registries including Panama and Liberia have ratified the Convention, enacting legislation. It allows Australia to inspect ships for matters in relation to crew welfare. AMSA has shown their effectiveness in enforcing this convention.

5.2 International seafarers have a choice from wide range of available ship management companies and operators. Ship management companies are based accordingly around the world to provide the most beneficial outcomes for their owners, whilst both protecting and maintaining the asset (the ship) and the environment as well as providing a financial benefit.

- 5.3 It is acknowledged that standards of wages across professions vary worldwide and are dependent on the standard of living for the region from which an employee, including a seafarer is employed. The same applies to shipping companies whose wages vary and are proportionate to the standard of living in the region of employment of seafarer.
- 5.4 SAL is encouraged to note from the *International Chamber of Shipping – Annual Review* that since the beginning of this year the ILO minimum wage for Able Seafarers has increased and that the total wage paid after overtime hours and other mandatory payments such as leave entitlements is typically 50 per cent more than the basic level. Also, ratings from developing countries serving on internationally trading vessels, including open registries ships, receive significantly higher wages than that recommended by ILO. Furthermore, ships officers receive substantially higher pay, and differentials between officers from OECD and non-OECD nations continue to narrow.
- 5.5 SAL strongly believes that seafarers should be appropriately paid for their services and supports the introduction of the MLC. This has enabled AMSA’s Port State Control (PSC) inspection regime to extend to seafarer welfare related matters in addition to ship safety and environment protection. SAL considers this inspection regime as the appropriate vehicle to monitor compliance with the established international conditions of employment for seafarers.
- 5.6 Consideration also needs to be given to the fact that seafaring jobs offer important employment and training in third world countries. Seafarers in those countries can earn considerably better wages than they could achieve in their own country.

6. Standard of Flag of Convenience vessels trading to, from and around Australian ports, and methods of inspection of these vessels to ensure that they are seaworthy and meet required standards

- 6.1 Foreign ships operating in and around the Australian region come under the Asia-Pacific region (Tokyo MOU) for Port State Control (PSC) Inspections.
- 6.2 To put things into perspective and provide clarity when making assessments on the standard of ships, the table below sets out a 10-year summary of the total number of PSC inspections undertaken within the Tokyo MOU (which includes Australia) of the eight largest open register flag states and those of Australian registered ships.

10- Year summary - Number of PSC Inspections - Australian Register versus Eight largest Open Registers												
Flag/Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Australia	10	12	11	8	4	12	9	7	6	5	3	87
Panama	6496	6484	6609	6,930	7,156	7,333	7952	8692	9,189	8928	8604	84,373
Liberia	1217	1073	1171	1,257	1,228	1,290	1759	2019	2,278	2181	2214	17,687
Marshall Is	317	368	490	507	557	721	923	1109	1,492	1,657	1,809	9,950
Singapore	761	806	883	931	1,038	1,200	1380	1664	1,901	2,069	2,113	14,746
Bahamas	644	641	673	621	533	588	610	665	701	733	661	7,070
Malta	552	421	459	422	421	520	554	707	740	752	821	6,369
Cyprus	722	575	548	477	437	474	500	500	495	467	495	5,690
Isle of Man (UK)	133	135	148	108	103	105	107	142	186	165	198	1,530

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- 6.3 With a disproportionately small sample of Australian ships being inspected, it is misleading to attempt to compare the safety or compliance records of Australian or Open Register ships on a simple numbers basis. Clearly, open registries by virtue of their large fleets are subjected to greater number of PSC inspections than those undertaken on a few Australian registered ships in the region. A total of 87 inspections of Australian registered vessels were undertaken within the Tokyo MOU over the 10-year period which amounts to significantly less than the number of inspections in one year for the eighth largest open register, Isle of Man (UK).
- 6.4 The eight largest open registries mentioned above currently appear on the Tokyo MOU and the Paris MOU white lists for PSC performance whilst Australia is not included as it did not meet the relevant requirements of inspection/arrivals as set by the PSC authorities i.e. insufficient sample size. Of the limited sample inspected none were detained.
- 6.5 In 2013, 49 per cent of the ships in the world fleet were under 15-years-old and 79 per cent of the world's gross tonnage was under 15-years-old. In contrast, the average age of an Australian ship in the major trading fleet and operating under a general licence is 23 years. The average age of the foreign fleet visiting Australia in the last three years has been less than 8.5 years. Newer ships are generally safer and more environmentally efficient than older ones.
- 6.6 As per AMSA's periodic PSC reports, the age of a ship is a major indicator of the probability of it being detained at a PSC inspection. This implies that a greater focus should be placed on the Australian registered ships.
- 6.7 AMSA is the appropriate authority with the available data to evaluate the overall standards of all foreign vessels visiting Australia.
- 6.8 SAL's view is that, in the last 20 years, through PSC intervention, AMSA has influenced significant behavioural changes in safety and has recently further enhanced its effectiveness by directing bans on ships from entering or using Australian ports for stipulated periods on systemic safety grounds.
- 6.9 SAL is supportive of these existing arrangements for all visiting foreign flag vessels and considers that appropriate controls and inspection mechanisms exist.
- 6.10 The international shipping community has high regard for Australia's port state control regime. It is worth noting that there were no appeals raised against AMSA inspections to the Detention Review Panels of either the Tokyo or the Indian Ocean MOUs, and no appeals were lodged with the Australian Administrative Appeals Tribunal against any AMSA PSC inspections.
- 6.11 From an environmental perspective, SAL accepts that the percentage of open register ships trading to Australia is far greater than locally registered ships, but disagrees with uninformed perceptions that such vessels are hence a risk to our environment. As mentioned above foreign flagged vessels are generally newer and better maintained. In the last 23 years (since 1992), despite the fact that the majority of the ships on our coast are foreign flagged, the largest major ship sourced oil spill (325 tonnes) on the Australia coast came from an Australian owned and registered vessel (Iron Baron, 1995).

7. 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;

7.1 As mentioned above SAL is supportive of any initiatives that will assist seafarers in their travels around the world.

7.2 SAL believes that the legal remedies available to seafarers on open register ships visiting Australia would not be different to those provided to those from other flag states. It is envisaged that should a seafarer require assistance from his/her local consulate the relevant Australian Commonwealth department will facilitate this accordingly.

7.3 SAL would support initiatives by port operators and authorities to enhance the existing arrangements that facilitate shore leave and related shore-based welfare for seafarers.

8. 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*; and

8.1 The 1992 Inquiry was an opportunity for the government to gain an appreciation of the industry at a time when changes needed to be made. Following a spate of losses of bulk carriers in the early 1990s, the IMO adopted new regulations in SOLAS containing specific safety requirements for bulk carriers, as well as a Code of Practice for the safe loading and unloading of bulk carriers.

8.2 However, the foundations for this current inquiry seem to have been based on uninformed advice that “very few” recommendations from the 1992 Parliamentary inquiry had been implemented. SAL notes that since then (1992) two additional Parliamentary reports were released in 1994 and 1995 which amongst other things, provided progress reports on the status of the 1992 recommendations.

8.3 Further in 1998, an updated report of AMSA’s progress on these matters was provided by the House of Representatives Standing Committee, Transport and Microeconomic Reform. This report reflected that improvements were made in the quality of ships, operational issues, port state control and crew training and competency.

8.4 Since 1992, it is well known that international shipping has significantly improved in safety, environmental compliance and crew welfare. Some of these improvement initiatives are:

- a) *International Safety Management Code* – well recognised international standard for the safe management and operation of ships and for pollution prevention with widespread applications to different levels of management, whether shore-based or at sea. It gave rise to the “Designated Person Ashore” acting as a conduit between the ship and management, with responsibilities for ship safety and maintenance;
- b) *Regional Port State Control* - Under auspices of the IMO and as part of the Tokyo MOU, AMSA’s port state control interventions have influenced a significant behavioural shift towards ship safety;
- c) *International Convention on Standards for Training Certification* – updated training and competency standards for seafarers, with amendments in 1995 and 2010 covering, *inter*

alia, certification of seafarers, requirements for hours of work and rest and prevention of drug and alcohol abuse, as well as updated medical fitness standards.

- d) *Maritime Labour Convention 2006 – Seafarers Welfare (covered in section 5, above)*
- e) *International Association of Classification Societies* –set the standards for ship design and construction and survey based on IMO developed statutory requirements. Survey requirements become more stringent based on age of the vessel.
- f) *IMO Member State Audit Scheme* – This scheme has been established as a voluntary mechanism to assess the degree to which a member State conforms to its obligations set out in various IMO instruments made mandatory when ratified by the State. SAL is aware that in 2008, AMSA was subjected to such an independent audit, which amongst other things covered Port State Control interventions with no adverse findings. This audit scheme which becomes mandatory from 1 January 2016 will provide an additional quality and safety layer towards providing worldwide consistency for shipping safety.
- g) *Electronic Chart Display Information System (ECSIS)* – Since 2012, all ships irrespective of size are required to progressively have installed ECDIS nautical charts and nautical publications to plan and display the ship’s route for the intended voyage and to plot and monitor positions throughout the voyage. This initiative improves situational awareness and enhances navigation safety.
- h) *Ballast water Management* – Since July 2001, Australia has mandatory ballast water management requirements to reduce the risk of introducing harmful aquatic organisms into Australia’s marine environment through ballast water from international vessels. In addition, ships now have approved systems for treating ballast water before it can be discharged.
- i) *Double hulled tankers* – The International Maritime Organisation (IMO) established double hull standards in 1992 which required all oil tankers over 600 dwt delivered from July 1996 to have a double hull or equivalent. Tankers over 20,000 dwt and delivered before July 1996 had to comply with the double-hull standards by the time they were 25 years old, or 30 years with SBT/PL. These age limits are close to the end of the commercial life for most tankers. Accelerated phase-out requirements were adopted by IMO in 2005, which required Category 1 tankers (i.e. pre-MARPOL tankers over 20,000 dwt with no SBT/PL) to be phased out by 2005. Category 2 tankers (i.e. MARPOL tankers over 20,000 dwt with SBT/PL) were to be phased out by 2010, as were smaller Category 3 tankers (over 5000dwt). The last single hull tankers will be phased out worldwide by the end of 2015.
- j) *Great Barrier Reef & Torres Strait Protection* – As a large number of the ships traverse through the Great Barrier Reef, a number of steps have been taken locally to reduce the risk in the GBR and Torres Straits. These include:
- Extension of the GBR coastal pilotage regime into the Torres Strait Enforcement of mandatory pilotage areas;
 - Setting up of a vessel traffic services (VTS) to monitor ship movements and intervene if shipping moves beyond defined limits such as designated shipping areas;
 - Extension of the mandatory ship reporting requirements;
 - Fitting of improved navigational aids;
 - Installation of a UKCM system in the Torres Strait;

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- Establishment of Traffic Separation schemes and ship routing;
 - Improved nautical charting and aids to navigation;
 - Imposition of higher penalties under the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* for discharge of oil or oily mixtures into sea;
 - legislation supporting control of pollutants and emissions from ships;
 - emergency response assets and arrangements including emergency towage assets and oil spill response equipment
- 8.5 SAL acknowledges that globally, there may still be a few examples of sub-standard registries (flags), but believes that such flags would be unlikely to visit nations, such as Australia that have mature systems for Port State Control.
- 8.6 In the last two decades revolutionary changes have occurred in the standards for international maritime safety governance. Various established inspection regimes to which shipowners (and related operators) and their ships are now subjected to, have progressed and matured. In addition, national administrations, including Australia have been implemented similar regimes for state based commercially registered vessels.

Conclusion

Shipping, like most other markets, is a globalised one and bears no boundaries in terms of ownership. In the modern globalized world, the fact that Australia is ‘girt by sea’ does not necessitate that as a country our prosperity or security relies on a maintaining a fleet of vessels under the national flag.

Australia’s prosperity and security is advanced by capitalising on the natural advantages of the lucky country and this includes the access to the most efficient method of facilitating trade with our international partners.

The foundations of Australia’s prosperity are the products of primary and secondary industries. Shipping is a service industry that creates considerable employment within Australia and, importantly, it facilitates trade for those primary and secondary industries. Failure to take advantage of the most efficient means of maritime trade will undermine the competitiveness of Australia’s products and will handicap the real drivers of the Australian economy and ultimately degrade the living standards of all Australians.

International shipping has progressed significantly in the areas of safety and environmental management. Ship owners and operators actively seek improvements to ship safety and regulatory compliance because it makes good business sense, reducing running costs and reducing their insurance premiums.

It is wrong to apply generalised anachronistic stereotyping to ships of open registers. Some of these open registers specialise in providing flag state services to ensure their ships maintain the highest level of compliance with international conventions. There are now adequate and comprehensive international and national regulatory mechanisms to control the standards and performance of foreign ships visiting Australia. AMSA has an excellent global reputation for managing this process.

Australian governments should explore avenues to harness shipping as the preferred mode of transport, both domestic and international. The increased utilisation of foreign flagged vessels should be embraced and used to the nation’s advantage. These ships are already the lifeblood of Australia’s international trade.

Under any examination the international shipping industry of today is unrecognisable when compared to 1992. Possibly the greatest shame this inquiry will expose is the general lack of gratitude and recognition shown for the contribution that foreign flagged vessels have made to Australia's prosperity.

Authorised by:
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