

## **Review of the *Coastal Trading (Revitalising Australian Shipping) Act 2012***

### **Submission by the Hon Neil McKerracher KC and the Hon Steven Rares KC**

1. The Federal Court of Australia's early decisions on the construction of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth) (CTA) appear to have resolved how the licensing scheme works and smoothed the administrative processes, given the lack of recent litigation on those matters.
2. However, there is an inherent difficulty with the current structure of the CTA. It inhibits development of a financially viable domestic industry by requiring an employer, such as a shipowner or operator to pay the crew wages in accordance with the *Fair Work Act 2009* (Cth) when any ship is in Australian waters sailing a third or later voyage under a general or temporary licence within a 12 month period.
3. Australian wage and other employment conditions are uncompetitive when compared with the less financially onerous employer obligations under the laws of most, if not all, Asian and other economies where substitutable services are available to employers in the industry.
4. At present, legislation such as the CTA and the cost of employing a local workforce in these industries makes it financially impossible for Australian maritime based businesses to compete with foreign enterprises that benefit from the regulatory and far lower cost structures in Asia and further afield.
4. The Parliament could consider enacting bespoke laws providing for:
  - a. taxation and other regulatory exemptions directed to levelling the playing field for local businesses in respect of redressing the more favourable overheads and regulation under which overseas competitors operate, including in respect of employee wages and conditions. Such a change to the domestic regulatory environment would promote the Commonwealth's aim of developing a viable domestically flagged fleet and its supporting industry (eg: equipment suppliers and shipwrights),
  - b. compensatory exceptions and or taxation treatment to owners and other businesses to encourage employment of Australian masters and one or more senior officers on lower salaries and emoluments than are currently necessary under the *Fair Work Act*. Their salaries and emoluments could be made subject to concessional tax rates (to net off the effect of the reduced gross pay) while allowing the vessel to be manned by a foreign crew who are employed and paid in accordance with the standards fixed in their home jurisdictions under the *Maritime Labour Convention*, as illustrated in *Fair Work Ombudsman v Transpetrol TM AS* [2019] FCA 400 especially at [121]- [125]. As that decision shows, the CTA applies the *Fair Work Act* to a foreign shipowner that has complied with its international obligations imposed by *Maritime Labour Convention* but whose ship operates more than two voyages under a

charterparty and a general or temporary licence. In that situation, the shipowner will be liable both to top up the crew's wages to the equivalent Australian wages and to the imposition of civil penalties for contraventions of the *Fair Work Act*, even if it is unaware, through no fault on its part, of the existence or conditions of any CTA licence applying to any voyage or the events that may give rise to those liabilities.

- 5 Also, it may be worth examining whether the United Kingdom's experiment with a tonnage tax would be effective here as a means to promote increased local ownership and operation of ships.
  
- 6 The critical importance to the national interest in both the defence of Australia's land and sea territory and its maritime trade justifies the grant of industry specific favourable taxation and regulatory treatment to encourage and support an internationally competitive local infrastructure for our shipping industry. Those imperatives warrant a robust policy response that will enable Australia to meet the need for long-term assurance to be given to local providers of maritime infrastructure to be able to service, among other objectives, the proposed new submarine fleet under the AUKUS arrangements and a viable shipping and shore based supporting industry.