



MARITIME UNION OF AUSTRALIA (MUA)

**SUBMISSION TO PRODUCTIVITY
COMMISSION**

**INQUIRY INTO TASMANIAN SHIPPING AND
FREIGHT**

13 DECEMBER 2013

1. Introduction

- 1.1 The Maritime Union of Australia (MUA) welcomes the opportunity to make a submission to the Productivity Commission (PC) Inquiry into Tasmanian Shipping and Freight announced by the Treasurer on 29 November 2013.

2. The Maritime Union of Australia (MUA)

- 2.1 The Maritime Union of Australia (MUA) represents over 16,000 workers in the shipping, stevedoring, port services, offshore oil and gas and diving sectors of the Australian maritime industry.
- 2.2 Members of the MUA work in a range of occupations across all facets of the maritime sector including on coastal cargo vessels (dry bulk cargo, liquid bulk cargo, refrigerated cargo, project cargo, container cargo, general cargo) as well as passenger vessels, towage vessels, salvage vessels, dredges, ferries, cruise ships, recreational dive tourism vessels and in stevedoring and ports. In the offshore oil and gas industry, MUA members work in a variety of occupations on vessels which support offshore oil and gas exploration e.g. on drilling rigs, seismic vessels; in offshore oil and gas construction projects including construction barges, pipe-layers, cable-layers, rock-dumpers, dredges, accommodation vessels, support vessels; and during offshore oil and gas production, on Floating Production Storage and Offtake Tankers (FPSOs), FSOs and support vessels. MUA members work on LNG tankers engaged in international Liquefied Natural Gas (LNG) transportation.
- 2.3 The MUA is a member of the International Transport Workers Federation (ITF) which is the peak global union federation for over 700 unions representing over 4.5 M transport and logistics workers worldwide.
- 2.4 The MUA was an important stakeholder in development of the 2012 national shipping reforms, including the workforce development strategy, and has been an active participant in implementation of the new shipping arrangements since 1 July 2012.

3. Key issues that warrant examination within the terms of reference

- 3.1 The MUA acknowledges that the Tasmanian economy is heavily reliant on shipping for freight and passenger movement, and by implication, for the efficient functioning of the Tasmanian economy. In this respect it is important that the Tasmanian freight market be subject to scrutiny from time to time aimed at identifying if it is operating efficiently and effectively.
- 3.2 In relation to sea freight, it is critically important however that Tasmania's domestic freight movement which requires a sea leg i.e. distribution to the Australian mainland, and its international export requirements by sea, are examined separately given they are two distinct freight markets characterised by significantly different regulatory and economic frameworks.

- 3.3 A failure by the PC to properly understand these differences and to base its analysis and findings on a full and proper understanding of those distinctions could result in the PC replicating the inaccuracies that featured in the Tasmanian Freight Logistics Coordination Team (TFLCT) Discussion Paper on Interim Observations and Directions for Tasmanian freight infrastructure following the release of the TFLCT Chair's Interim Findings of August 2013. Although the MUA addressed those inaccuracies in detail in a submission to the TFLCT, its final report has not been released by the Tasmanian Government at the time of lodging this submission, so we don't know if the matters raised in the MUA submission have been adequately addressed.
- 3.3.1 In the circumstances, the MUA has attached its submission to the TFLCT of 31 October 2013 as an appendix to this submission.
- 3.4 We urge the PC to ensure that in responding to term of reference 1 (examine shipping costs, competition and shipping industry competitive structures across Bass Strait) it assess the relative competitiveness of shipping using road, rail (and perhaps air) for similar cargo volumes and distances as the comparator, as this will demonstrate the relative efficiency or otherwise of the sea freight mode (notwithstanding that road and rail options are unavailable).
- 3.5 In doing so, we believe it would be instructive if the PC were to then break down the costs of sea freight into its component parts, such as ship operating costs (including regulatory charges e.g. those imposed by the Australian Maritime Safety Authority), stevedoring costs, port charges (including the mandated return to State Governments at both ends of the Tasmanian sea freight chain), regulatory transaction costs such as required through activation, as necessary, of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the CT Act).
- 3.6 Such a rigorous analysis has never been attempted to our knowledge, so the proportional contributions of those components to overall freight costs are unknown. The lack of such analysis has impeded the development of evidence based policy options, particularly those which are discretionary to Government such as imposition of State Government port charges. The absence of rigorous analysis of the kind we believe should be undertaken often leads to a bias towards ideologically motivated policy solutions focussed on labour market issues, when in fact even radical labour market solutions such as a real wage reduction would have only marginal impact on freight costs relative to positive discriminatory State Government port charging (i.e. positive to coastal shipping relative to international shipping).
- 3.7 We also believe the PC should analyse exchange rate fluctuations and the impact on the cost of capital given the high capital costs of ships, whether purchased or chartered, to examine the relative impact on freight rates.
- 3.8 Should the PC assess shipping competitiveness against other transport modes as we suggest, we also urge the PC, in responding to term of reference 4 (Assess the merits and weaknesses of the current arrangements for supporting freight and passenger services between the

mainland and Tasmania and provide recommendations on an appropriate future approach and/or arrangements) to contrast the specific Tasmanian freight and passenger subsidisation schemes mentioned in term of reference 5(b) and 5(c) with the subsidies available to road and rail modes. For example, it would be instructive to know the level of subsidy that would be embedded in the construction and maintenance of a vehicle highway or a rail operation were one feasible between say Launceston and Melbourne, relative to the costs of the current shipping subsidy schemes.

3.9 We also urge the PC, in responding to term of reference 4, to assess the applicability, take up and cost/benefit of each of the four taxation incentives available to ship owners and ship operators under the Federal Government's 2012 *Stronger Shipping for a Stronger Economy* shipping reform package which provides for:

- An income tax exemption (ITE) for operators of Australian registered eligible vessels on qualifying shipping income;
- Accelerated Depreciation and rollover relief for owners of Australian registered eligible vessels;
- A refundable tax offset for employers who employ eligible Australian seafarers; and
- An exemption from royalty withholding tax for foreign owners of eligible vessels leased under a bareboat or demise charter to an Australian operator.

3.10 In relation to the income tax exemption provision, we would ask the PC to examine whether the lack of: (i) a deemed franking credit or tax exemption in respect of dividends received by resident shareholders from shipping profits which have otherwise been untaxed at the company level as a result of the shipping tax incentives; and (ii) a dividend withholding tax exemption of dividends received by non-resident shareholders from shipping profits which have otherwise been untaxed at the company level as a result of the shipping tax incentives have neutralised what would otherwise be an attractive taxation incentive, and to make a recommendation based on its finding/s on this issue.

The operation of the CT Act and the role of the ACCC

3.11 We note that the PC inquiry will be conducted in consultation with the ACCC.

3.12 It is the view of the MUA that notwithstanding the soundness of the *Stronger Shipping for a Stronger Economy* legislative reform package and in particular the CT Act, that the first 18 months of operation of the CT Act has revealed some teething issues in terms of the Act itself and the way in which the Act is being administered by the Minister's delegate that suggest changes are required.

- 3.13 While this PC inquiry is not the place to address all potential changes to the CT Act and its administration, there is one particular issue that we believe should be considered in this Inquiry that relates to the competition issue.
- 3.14 In the Reasons for Judgement of Robertson J in *CSL Australia Pty Ltd v Minister for Infrastructure and Transport (NO 3) [2012] FCA 1261* of 16 November 2012, the Judge considered the issue of freight rates as a consideration of the Minister's delegate in applying the provisions of the CT Act.
- 3.15 Notwithstanding the particulars in this case, and the determination on freight rates, the fact that the Minister's delegate is involved in a process of considering commercial matters such as freight rates is in our view inappropriate and will consistently result in conflict and uncertainty. A bureaucratic process that involves commercial considerations where the expertise to make commercial judgements in favour of one commercial party or the other is problematic, and untenable.
- 3.16 Rather, we say that commercial considerations must always rest with the commercial parties, unencumbered by direct third party involvement. However, to ensure those commercial considerations are addressed in an equitable and fair way we believe they should be monitored by the ACCC. What we propose is that ultimately, s 34(2)(g) of the CT Act which provides for the Minister to have regard to "any other matters the Minister thinks relevant.", which clearly encompasses freight rates, must be amended to restrict consideration of freight rates by the Minister (Minister's delegate). In its place we propose a process that that requires the commercial parties to make out a business case for determining the conditions for carriage of sea freight under license that would be subject to price monitoring by the ACCC.
- 3.17 We suggest this would deliver better discipline in the sea freight market and satisfy all parties that equity and fairness prevails. The model adopted for ACCC monitoring in the container stevedoring market provides a precedent.
- 3.18 We strongly recommend that the PC consider this issue in the terms we have outlined.

4. Consultation

- 4.1 The MUA would be available to consult with the PC and or ACCC should it wish to discuss this submission or any other matter on which the PC believes we could assist the Inquiry, including labour relations and workforce development issues associated with Bass Strait shipping and Tasmanian stevedoring.