Lachlan Payne

Since 1987, Lachlan Payne has been Chief Executive of the Australian Shipowners Association (ASA), having previously been appointed Deputy Chief Executive of the Association on its formation in 1986. Lachlan Payne has over twenty years experience in shipping policy and maritime industrial relations.

Having graduated in 1972 with a Bachelor of Commerce from the University of Melbourne, Lachlan Payne joined Brambles Long Distance Transport, where he was engaged in the operations of road, rail and sea transport.

In 1975 he joined a State government instrumentality as its Industrial Relations Officer and four years later became Chief Industrial Officer for the shipowners' industrial organisation then known as the Commonwealth Steamship Owners Association. There he became closely involved in maritime industrial relations at both federal and state levels, acting as an advocate and negotiator for CSOA members in award negotiations and dispute settlement proceedings.

Lachlan Payne took this specialised experience with him to the Australian National Maritime Association in 1986 (subsequently renamed Australian Shipowners Association). That year he was appointed Member of the Marine Council and in 1989 a Member of the Shipping Reform Committee of the Shipping Industry Reform Authority. In 1990 he was appointed a Member of the Joint Maritime Commission of the International Labour Organisation (ILO). Lachlan Payne is also a Council Member of the International Shipping Federation.

In 1998 Lachlan was appointed to the Shipping Reform Working by the Deputy Prime Minister and Minister for Transport, John Anderson.

Earlier this year Lachlan was appointed to a high-level tripartite working group of the ILO maritime sector to overhaul ILO maritime instruments.

MLAANZ
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SHIPPING: THE NEW GENERATION

STAR CITY SYDNEY

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LACHLAN PAYNE – CHIEF EXECUTIVE, AUSTRALIAN SHIPOWNERS ASSOCIATION

The Australian shipping industry has for some time been promoting steps that need to be taken to generate international competitiveness.

1. BACKGROUND

When it was first accepted back in the 1980's that something drastic had to be done to make the industry competitive, we thought there were essentially four issues that had to be addressed.

One was that the industrial relations record of the industry was terrible. Up until the mid 1980's about 4% of ship days were lost through industrial disputes. This was addressed and for about a decade now industrial stoppages have been virtually eradicated.

Secondly, the manning levels on Australian ships were way too high. In the mid 1980's Australian ships typically had manning levels in the low thirties. Negotiations which began in the late nineteen eighties led typical manning levels to be reduced first to around twenty-six, then to twenty-one then to eighteen and now to less than that on many vessels.

Thirdly, the system by which ratings were allocated to ships was an impediment to efficiency in the industry. This was a highly sensitive industrial issue. It was in April 1998 that this was really pushed as an issue of principle in the industry. As those of you were not on Mars at the time will know, April 1998 was when the waterfront dispute erupted.

We managed to negotiate the engagement system out of existence without any industrial disruption whatsoever and the industry is much better off as a result.

The fourth issue was that of fiscal assistance. During the 1980's and up until 1996 there had been in place a combination of measures available which comprised the following:

The *Ships (Capital Grants) Act 19*87, which provided a taxable grant equivalent to 7% of the purchase price of the vessel. Vessels were eligible for the grant provided that they were crewed by Australian resident seafarers.

The *International Shipping (Australian-resident Seafarers) Grants Act 1994* (see Attachment 4) provided a grant which amounted to a rebate of the amount of Group Tax remitted by the employer on behalf of the crew in an eligible ship This is a common measure internationally, adopted by OECD countries such as Germany, Denmark and Sweden. To be eligible the ship had to be in overseas trade for more than 50% of the vessel's time.

An amendment to the *Income Tax Assessment Act 193*6 at Section 57AM which provided for accelerated depreciaton of vessels over five years commencing in the year prior to the vessel's commissioning.

2. RE-GENERATION

The first two of these measures had been introduced in the eighties. The impact was such that between 1988 and 1994 alone, thirty-six new vessels were introduced into the Australian fleet which represented a turnover of some 45% of the fleet at that time.

The new vessels were generally larger, more fuel efficient, able to load and discharge cargo more quickly and more cost-effectively. The additional and replacement vessels represented an investment of over AUD 1.6 billion – in 1994 dollars.

3. DE-GENERATION

3.1 1996 - Dismantling of fiscal measures

One of the very first things the Coalition did on attaining office in 1996 was to repeal these measures. As a consequence, the shipping industry has really been in a policy vacuum ever since.

3.2 1997 - Prerequisite to consideration of measures

But in 1997 the then Minister responsible for Shipping, Peter Reith made it clear that the government would not even consider fiscal measures for the industry unless or until the seafarers' engagement system had been dismantled. So we negotiated its dismantling and it was dismantled.

3.3 1998 - Report on sustainability of the industry

In 1998 the Minister for Transport , John Anderson, commissioned a report to advise on the the creation of an internationally competitive Australian shipping industry, previous fiscal assistance measures and whether there were genuine threats to the long term sustainability of an Australian industry.

That report was handed to the Minister in May 1999. It has never been made public.

3.4 1999- Australia is not a shipping nation

In December 1999 the Deputy Prime Minister and Minister for Transport and Regional Services, John Anderson rose to his feet at a dinner in Melbourne and announced that as Australia is a shipper nation and not a shipping nation. This was an announcement that the fiscal measures which were the remaining outstanding issue, would not be provided by the Coalition.

The response of Australian ship operators was one of resignation. After four years of waiting for the Federal government to say something about shipping it was not all that surprising to hear such a negative response.

But the Government's negative response caused us to discover a series of points which the response had neatly ignored.

3.5 2000 - Grave legislative disadvantages discovered

One was that the Australian shipping industry labours under a legislative disadvantage caused by at least ten pieces of legislation that impose costs on Australians that the foreign operators with whom the Government requires Australians to compete in coastal trades escape completely. This is because of the way certain parts of Part VI of the Navigation Act are applied.

4. LEGISLATION AFFECTING SHIPPING: IMPOSITION OF COSTS ON AUSTRALIANS

We have identified ten pieces of legislation that, one way or another, or in combination, disadvantage Australian shipping vis-a-vis foreign shipping servicing Australia by imposing costs on Australian operators and not on foreign operators operating in Australia's interstate and intrastate transport industry.

4.1 The *Navigation Act 1912*

A vessel entering Australia is for practical purposes first considered under the *Navigation Act 1912*. A vessel introduced by an Australian entity to operate

permanently on voyages around the Australian coast would seek and be provided with a Licence under Part VI of the Navigation Act.

A vessel introduced to undertake a one-off or occasional voyage carrying domestic cargo would seek and be provided with either a Single Voyage Permit (SVP) or a Continuing Voyage Permit (CVP) under Part VI of the Navigation Act.

The distinction between vessels operating with a Licence as opposed to SVPs or CVPs is crucial.

4.2 The *Customs Act 1901*

A ship entering Australia to carry domestic cargo will have obtained either a Licence or an SVP or a CVP under Part VI of the Navigation Act. The question is whether the vessel is imported under the Customs Act.

According to the Australian Customs Service:

> "The key issue of whether a ship should be imported largely rests on the issue of whether the international voyage which brought the ship to Australia in the first place has ceased either permanently or temporarily. International voyage is not defined in the Act nor is importation….The Customs process therefore focuses on the particular circumstances of the ship in question…….A major consideration is the DOTRS permit because that is evidence of compliance with the Government's policy on cabotage."

The practical result is that a ship that is operating with a Licence will be imported under the Customs Act and a ship that is provided with an SVP or a CVP will not be imported under the Customs Act.

A ship that is imported under the Customs Act is deemed to be an Australian ship and is covered by Part II of the Navigation Act. A ship that is covered by Part II of the Navigation Act is then covered by the *Seafarers' Rehabilitation and Compensation Act 1992 and the Occupational Health and Safety (Maritime Industry) Act 1993* (both see below).

A ship that is not imported is neither covered by Part II of the Navigation Act nor subject to these other Acts.

4.3 The *Migration Act 1958*

The crew members of a ship entering Australia are taken to hold a Special Purpose Visa (SPV) under the Migration Act. Crew members taken to hold a SPV may remain in Australia in their ship indefinitely or, if they leave their ship, they must leave Australia within five days.

If a ship entering Australia is imported under the Customs Act the SPV's taken to be held by the crew are voided and crew members are required to hold Long Stay Business Visas. A Long Stay Business Visa can be obtained subject to the Department of Immigration and Multicultural Affairs being satisfied that there is no Australian labour available to perform the work to be undertaken by the person for whom the Visa is requested. This is known as the "Labour Market Test".

In the case of seafarers there is Australian labour available to perform the work of seafaring within Australia and Long Stay Business Visas would therefore not be made available to the applicants for such Visas.

The Migration Act prevents operators of ships imported under the Customs Act from engaging foreign labour on such ships because of the Labour Market Test. At the same time, the Migration Act allows operators of ships not imported under the Customs Act to employ foreign labour utilising Special Purpose Visas whilst carrying cargo within Australia under permits issued pursuant to Part VI of the Navigation Act.

4.4 The *Workplace Relations Act 1996*

Due to the combined effects of the Customs Act, the Migration Act and the Navigation Act, an operator of a ship trading continuously on the Australian coast must employ Australian labour. Australian labour is employed subject to the conditions of the Workplace Relations Act.

Enterprise bargains negotiated within the terms of the Workplace Relations Act necessarily have regard to Australian standards of living, pay and conditions and give rise to labour costs substantially in excess of the cost of labour agreements applicable to ships in which foreign labour is engaged.

The Workplace Relations Act provides the framework within which pay and conditions are negotiated between employers and Australian workers, and is applicable to ships in which Australians are employed. Ships trading in Australia under permits in which foreign labour can be employed are not subject to the terms of the Workplace Relations Act.

4.5 The *Seafarers' Rehabilitation and Compensation Act 1992*

The vessels to which the Seafarers' Rehabilitation and Compensation Act (the 'SRC Act') applies are those covered by Part II of the Navigation Act. A vessel which is imported under the Customs Act is deemed to be an Australian vessel for the purposes of Part II of the Navigation Act and consequently becomes subject to the provisions of the SRC Act.

The provisions of the SRC Act create liabilities for employers such that Protection and Indemnity Clubs, the regular insurers servicing ship operators

world-wide for crew and cargo insurance cover, will not provide cover for employers whose employees are subject to the SRC Act. Premiums are therefore higher for Australian operators.

Foreign crews of foreign vessels trading in Australia but which are not imported and thus not deemed to be Australian ships under Part II of the Navigation Act and thus do not fall within the application of the SRC Act. Such vessels are covered by P&I insurance which is available at less expensive premiums than those applied by the general insurance industry to employers of crews in ships covered by the SRC Act.

4.6 The *Occupational Health and Safety (Maritime Industry) Act 1993*

The vessels to which the *Occupational Health and & Safety (Maritime Industry) Act 1993* (the 'OH&S (MI) Act') applies are those covered by Part II of the Navigation Act. A vessel which is imported under the Customs Act is deemed to be an Australian vessel for the purposes of Part II of the Navigation Act and consequently becomes subject to the provisions of the OH&S (MI) Act.

The shipping industry internationally is subject to the International Safety Management Code (the ISM Code) whichwas promulgated by the International Maritime Organisation and prescribes, amongst other things, auditable standards of crew health and safety. These ISM Code standards are accepted internationally as appropriate and adequate minimum standards.

Crews of vessels covered by the OH&S (MI) Act must have standards applied which are in excess of those required by the ISM Code.

Crews of vessels trading in Australia but which are not imported and thus not deemed to be Australian ships under Part II of the Navigation Act and thus not falling within the application of the OH&S (MI) Act are covered by the ISM Code which applies less onerous and prescriptive requirements than those applicable to employers of crews in ships covered by the OH&S (MI) Act.

4.7 The *Customs Tariff Act 1995*

Item 42 of Schedule 4 to the Customs Tariff Act provides duty-free entry into Australia for goods described as parts of vessels and materials for use in the modification and repair of vessels. There are certain items used in vessels, both internationally and in Australia, which are deemed by the Australian Customs Service not to be parts or materials for use in the modification and repair of vessels.

The charges levied on imported items include duty and GST on freight and insurance as well as a fee for customs entry. In the case of a mooring line, for example, an item unavailable in Australia and thus necessarily imported, an Australian operator importing such an item is paying a premium imposed by

the Customs Tariff Act which the operator of a foreign ship trading under a permit in Australia's coastal trade does not have to pay because the mooring line will be re-exported with the ship.

The Customs Tariff Act imposes costs on Australian operators in interstate trades which their foreign competitors in the *Australian interstate transport industry* do not incur.

4.8 The *Shipping Registration Act 1981*

Section 12 of the Shipping Registration Act prescribes that a vessel owned by an Australian entity shall be entered in the Australian register of ships. Since most ships operating continuously in coastal trades (and therefore imported and licenced and subject to Part II of the Navigation Act) are owned by Australian entities such ships have to be registered in Australia.

Foreign-owned ships operating in Australia under permits under the Navigation Act are not imported, are not deemed to be Australian ships and maintain their foreign registry.

The benefits conferred by foreign registry arise from fiscal and tax relief measures made available by many foreign nationalities of registry. The disbenefit attributable to mandatory Australian registry is that Australian registration now confers no fiscal or tax benefit whatever.

Australian ships operating in Australia are disdvantaged by being denied access to tax and fiscal concessions available to foreign entities operating vessels in the *Australian interstate and intrastate transport industry* under permits and registered in countries that make tax and fiscal concessions available to the ship owner.

4.9 The *Income Tax Assessment Act 1936*

Australian resident taxpayers who are engaged overseas as seafarers in ships trading internationally (and which trade as part of such voyages in Australia's coastal trades) do not qualify for concessional tax treatment under Section 23AG of the Income Tax Assessment Act. Foreign seafarers working in ships in the *Australia interstate and intrastate transport industry* would qualify for concessional tax treatment. The reason is that for them, work in a ship in *the Australian interstate and intrastate transport industry* is foreign service which makes concessional tax treatment available to them under the income tax laws of their country of residence – if they are paying tax at all.

Australian seafarers deriving income in foreign service are discriminated against compared to other Australians deriving income in foreign service. An Australian who works in foreign service ashore enjoys concessional tax treatment under the Income Tax Assessment Act, whilst an Australian working

in foreign service at sea does not enjoy concessional tax treatment under that Act.

You might recall my mentioning that under the *Ships (Capital Grants) Act 19*87, crew had to be Australian-residents and under the *International Shipping (Australian-resident Seafarers) Grants Act 1994* the ship had to be overseas for more than 50% of its time. In combination, these two provisions, although beneficial at the time, highlighted the discriminatory nature of the *Income Tax Assessment Act 1936.*

4.10 The *Product Stewardship (Oil) Act 2000*

The Product Stewardship (Oil) Act imposes a levy on the cost of lubricating oils purchased in Australia. The purpose of the levy is to encourage recycling of waste oil. In the case of the lubricating oils used in ships, the lube oils are almost entirely consumed, leaving little if any waste to be discharged ashore. The waste-oil recycler who then sells-on recycled oils is paid a grant for recycling of waste oils which market forces are presumed will be passed on at least in part to the party generating the waste oil.

Since in shipping there is virtually no waste oil generated, the Australian ship operator pays the levy but is unable to recoup the additional cost through access to the recycler's grant.

Foreign ship operators competing with Australians in *the Australian interstate and intrastate transport industry* can avoid this cost by purchasing lubricating oils at a foreign port.

* * * *

In many ways we wish we had hit on this iniquity before. But now that we have we can demonstrate unarguably that Australian shipping is outrageously disadvantaged compared to foreign operators with whom Australian are required to compete.

So what are the Australians who operate ships going to do about this conundrum?

5. 2001 - BUILDING AN IMPERATIVE

The permit system is manifestly not working properly. It is only a matter of time before some shipper who is using permits finds him or her self in a major political issue over the immigration question.

The question would be essentially this: "What is "XYZ Australia Pty Ltd" doing employing shipping services in the Australian interstate transport industry which involves the employment of foreign labour at foreign rates of pay, ships

that do not have to comply with laws with which Australians have to comply all under a legislative regime which is strangling Australian service providers?"

What is clearly needed is a formulation that addresses an issue that I doubt any Australian would argue with, and it is this:

Australia ought to enjoy the benefits of the economic activity of being a substantial exporting and commodity processing nation **and** Australia ought to enjoy the economic benefits of participating in the carriage of those commodities at internationally competitive prices.

To achieve this outcome would require the Government to realise that Australia can be both a shipper and a shipping nation. This in turn requires a reformulation of the relative positions of the shipping and shipper lobbies in this country.

How do you go about addressing the traditional divide that has existed between Australian shippers and Australian ship operators?

Well, it requires vision. Discussions with a bulk-ship operator and bulk shipper in intrastate, interstate and international trades and who is involved in a key shipper group has suggested that there ought to be no difference of opinion between the shipper lobby and the shipping lobby on one fundamental issue. That issue is that Australia should enjoy the benefits of the economic activity of both being a major exporting nation as well as the economic activity accruing to the carriage of trade by sea at internationally competitive freight rates.

Historically, the shipper lobby has successfully promoted the view, embraced in Canberra, that Australia is a "shipper nation not a shipping nation". This phrase encapsulates the sentiment behind the Government's indifference to shipping conducted by Australians.

6. CONCLUSION

The stance of both the shipper and the shipping lobbies are changing on this very fundamental impediment to involvement in shipping by Australians.

The shipper lobby of course can and will speak for itself.

The shipping lobby is changing by recognising that the provision of shipping services by Australians at internationally competitive prices does not necessarily rely in the first instance on creating a new generation of Australian-flag ships. There is a much wider benefit for Australia which extends to the provision of a wide range of shipping-related services.

6.1 2002 - Formulating an alternative structure for shipping

But the key point is that the generation of an expanded range of maritime services growing alongside greater participation by Australian operators carrying Australia's trade will inevitably lead to the expansion of an Australian shipping presence. And there is no doubt that in a climate where both Australian cargo interests and Australian carrier interests recognise a common goal of supporting an internationally competitive shipping industry in Australia the settings required to encourage investment in shipping will be far more readily attained.

Through the 1990's there was a conviction that cabotage would be removed. This was based on a lack of appreciation from many quarters that (what passes for) cabotage in Australia actually works to protect foreign ships operating with permits from the costs imposed on Australian ships with licences.

But now there is a growing acceptance that it is manifestly unfair that Australian companies providing services in Australia should be gravely disadvantaged compared to foreign companies providing services in Australia. This is resulting in an acceptance that the permit system under the Navigation Act does not actually work properly for anyone – shippers or ship operators, and that it ought to be replaced by a formula that disadvantages neither Australian ship operators nor shippers.

We are continuing to build the case for Government addressing the competitive disadvantages imposed on Australians in the shipping industry in Australia.

Thankyou for your kind attention.