

Trade & Transport LegalUpdate

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Recent announcements concerning shipping

Great Barrier Reef Reporting Zone

It has been reported that the IMO Maritime Safety Meeting (the 88th session of the Maritime Safety Committee held earlier this month) has approved an extension of the mandatory ship reporting system to include the southern portion of the Great Barrier Reef's Marine Park from July 1, 2011.

It has also been reported that the Federal Transport Minister (in welcoming this development) has said that the Government will introduce legislation early next year aiming to toughen penalties for any ships which breach maritime and environmental laws.

Post script to presentations made to the P&I Clubs in October and November 2010

It may be recalled that I reported at that presentation that in the lead up to the Federal election earlier this year the Australian Government had foreshadowed a new offence of criminal navigation, that is operating a vessel in a manner that causes or is likely to cause pollution or damage to the environment, with a fine of \$5.5M for corporations and \$2.2M for individuals or 10 years jail.

It is assumed that that is the proposed legislation that the Federal Transport Minister was referring to when welcoming the announcement by the IMO. We have written to the Federal Transport Minister and the Department drawing their attention to Article 230 of the Law of the Sea Convention to which Australia is of course a party.

The Federal Government has also published a "Discussion Paper" entitled "Reforming Australia's Shipping". It may be recalled that this was also the subject of commentary in my presentation to the Clubs in October and November. The Discussion Paper is largely in line with what had previously been foreshadowed particularly insofar as the reforms are designed to revitalise the Australian fleet.

Some of the key measures discussed are as follows:

- "The establishment of a "second register". Vessels to be entered on such a register would need to be operated by Australian companies but could allow the use of some foreign seafarers. However the master and chief engineer would need to be Australian residents and whilst operating on

the Australian Coast the terms and conditions of employment for the entire crew would be governed by the Australian Fair Work legislation and current minimum workforce standards, crew competencies, numbers and conditions would be the same as those applied on the primary national register.

- The proposed fiscal incentives are largely in accordance with what had been foreshadowed, such as access to either tonnage tax or a tax scheme combining accelerated depreciation and relaxed capital gains tax provisions for selected capital assets, relief from royalty withholding tax liability by foreign owners of vessels where the vessel is leased under a demise or bareboat charter to an Australian company. It is said that in deciding on the rates and thresholds for the tonnage tax the government would have regard to tonnage tax rates utilised in the United States, the UK, France, Germany and other nations.
- The Seafarer Taxation Reform package is largely in line with what had been foreshadowed but further detail has been supplied.
- Permits: This is a significant area where the Discussion Paper varies from the foreshadowed changes, that is in relation to the current system of continuing voyage permits and single voyage permits. Whereas it had previously been suggested that the permit system would be retained it is now clear that consideration is being given to the abolition of continuing voyage permits and a reduction in the use of single voyage permits. The Discussion Paper identifies two different categories of licences that might be introduced. The first is a general licence which would require licensed ships to be Australian operated and flagged, as well as crewed by Australian residents and the second would be a new category of temporary licence providing access to the Australian coastal trade over a limited period of time, possibly two years. Such licences would only be granted on an assessment of a business case which supports the long term interests of a competitive Australian shipping industry, including explicit consideration of the employment of Australian seafarers and the numbers of vessels in the Australian trading fleet.

The Discussion Paper has sought public comments by the end of January 2011.

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