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7 August 2009

Hon. Julia Gillard
Deputy Prime Minister
Minister for Education
Minister for Employment and Workplace Relations
Minister for Social Inclusion
Parliament House
Canberra ACT 2600

Dear Deputy Prime Minister

***Re: Fair Work Act 2009* Regulations and Coasting Trade Permits**

In July 2009 in a letter addressed the President of the Australian Industrial Relations Commission (Commission) you advised your intention to make regulations to extend the *Fair Work Act 2009* (the Act) to ships that have been granted a permit under s.286 of the *Navigation Act 1912.* As a result of this extension of the Act you have asked the Commission to consult the shipping industry regarding the award modernisation draft *Seagoing Industry Award 2010*.

AMMA have members who utilise foreign flagged permit vessels for which your proposed regulation change will impact upon; this includes both intermittent and regular usage. We have consulted our membership; this includes major mining and oil and gas companies, who have identified key business risks by the proposed regulations.

The regulations will extend coverage of the Act to foreign corporations who employ non citizen crew on permit ships while engaged in the coasting trade as defined under the *Navigation Act 1912*.

Whilst your explanatory memorandum refers to all seafarers working regularly in Australian waters being covered by Australian workplace relations law, the proposed regulations make no such distinction.

It is of concern to our members that their use of permit vessels for transportation will be severely jeopardised by being subject to the Act. It makes no sense for the foreign crew of a permit vessel who, while on route to or departing an Australian port, deliver or take on cargo between ports to come under the coverage of the Act. Such work may only involve a matter of days yet the employees will be covered by all the provisions of the Act. This includes good faith bargaining, right of entry, protected industrial action, modern award coverage, unfair dismissal, adverse action and the National Employment Standards.

The issue of non citizen crews being a vehicle for taking protected industrial action when plying the Australian coastline is a business risk that currently does not exist, is a most unwelcome and not in Australia's national interest.

For a foreign employer whose seafarers are not permanently engaged in the Australian coasting trade; coverage under the Act for intermittent short periods can only be described as over regulation and a disincentive for permit vessels to enter Australian waters.

AMMA acknowledges that seafarers are entitled to expect that basic employment rights will apply irrespective of the flag of the ship, but the international shipping industry could not function if regulations which applied to a ship changed each time the ship entered a port around the world. This is in effect what your regulations will create.

All permit vessels entering Australia meet the wages and conditions imposed by the International Transport Federation and have standard ITF collective agreements.

In 2006 the Maritime Union of Australia sought to have permit vessels covered by the *Maritime Industry Seagoing Award 1999*. After an extensive hearing Commissioner Raffaelli of the AIRC held that it would not be appropriate to do so having regard to international shipping standards and practice, vis a vis Australia. No argument has been advanced why this position has changed.

As labour costs form a major component in the calculation of freight rates the cost of labour has a significant impact on the commercial operations of ship owners. The labour costs under Australian industrial awards are notoriously in excess of international standards, therefore any attempt to bring permit vessels under our Australian workplace relations system will have significant cost ramifications.

For example Australian seafarers effectively receive on day's paid leave for each day worked (i.e. 6 months paid leave in each year). This is far greater than the international standards and community standards in Australia

Where a permit vessel forms part of an international fleet, crew members can be interchanged between vessels, the administration of what is proposed through the regulations will be unworkable in this situation.

The Australian shipping industry is plagued by high labour costs and restrictive work practices. The extension of the *Seagoing Industry Award 2010* foreign crews clearly runs counter to the fundamental premise upon which your Government established the award modernisation exercise i.e. no increase in costs to employers.

The House of Representatives inquiry into Coastal Shipping Policy and Regulation has produced the Report *Rebuilding Australia's Coastal Shipping Industry*. This Report has not yet been finally dealt with by the Minister for Transport.

In AMMA's view it is not appropriate to bring permit vessels issued pursuant to the *Navigation Act 1912,* under the Australian workplace relations system.

It is also premature as the Report from the Minister for Transport has not finally dealt with by the Minister, and accordingly the proposed regulations should not issue until this has occurred and a full review of the ramifications of the regulations has been conducted.

Whatever the final outcome, the regulations should be restricted in their application to seafarers **regularly** working in Australia as stated in your Explanatory Statement.

Accordingly, AMMA on behalf of the resources sector seek both consultation with you and your earnest consideration of the above issues.

Regards

Steve Knott
Chief Executive