

Inquiry into a sustainable Queensland intrastate shipping industry

Queensland Council of Unions Submission



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Council of Unions**

The Queensland Council of Unions (QCU) is the peak union council in Queensland. Since the election of the Palaszczuk Government in 2015, the QCU has worked constructively with Government and the Queensland Parliament to improve conditions for working Queenslanders within the jurisdictional limits that exist.

The QCU has had the opportunity to see the submission of the Maritime Union of Australia (MUA¹) in relation to this inquiry and supports that submission. The examples provided in the MUA submission illustrate concerns for a strategically important industry in which jobs that could easily be undertaken by Australian workers are replaced with overseas labour on substandard terms and conditions. Elsewhere, the comparison has been made to driving trucks within Australia² in that it would not matter whether the trucks were owned and operated by an overseas company and/or staffed by overseas workers, the minimum conditions of employment for workers provided by the *Fair Work Act 2009* and relevant modern awards would have application. In addition, state legislation pertaining to workplace health and safety, workers' compensation and anti-discrimination would also have application to these workers and the nature of their employment.

From the MUA submission we note that visits from international flag ships to Australia have doubled between 2002 and 2017. This establishes the well-reported decline of Australian shipping³ and includes instances of flag of convenience (FOC) vessels being used for shipping that only occurs within Australian waters. In particular, the MUA submission references the heavy use of FOC vessels by Rio Tinto for the transport of bauxite from Weipa to Gladstone. In these cases, workers are being subjected to conditions, such working up to 91 hours per week for nine to 12 months of the year, that would be illegal, and probably negligent under Australian law. Moreover, these workers are remunerated at a fraction of the minimum rate under Australia's fair work system.

The Palaszczuk Government has been willing to consider the options that are available to it within those jurisdictional limitations in order to reverse some of the more egregious developments in the labour market in Queensland and Australia. This includes inquiries undertaken by government and/or parliament into labour hire; fly-in/fly-out (FIFO) employment; the operations of Work Health and Safety Queensland; and wage theft. In all of the cases the QCU and its affiliates have been able to identify problems and potential solutions.

¹ MUA submission to the Inquiry into a Sustainable Queensland Intrastate Shipping Industry Transport and Public Works Committee Legislative Assembly of Queensland.

² AIMPE submission to House of Representatives Standing Committee on Infrastructure and Communications Inquiry into Shipping Reform Bills page 3.

³ AIMPE submission to House of Representatives Standing Committee on Infrastructure and Communications Inquiry into Shipping Reform Bills; ABC News Maritime industry says the Australian shipping sector will disappear without legislative and taxation changes 15 March 2016.

This inquiry is similar to those other inquiries in that it provides an opportunity for unions to identify problems facing the Queensland workforce. It is also similar in that it is only the Queensland Government, and other similar jurisdictions that are willing to take any action. The current Australian Government has demonstrated time and again that it has no interest in taking any action to rectify problems facing working Australians such as the prolific use (and misuse) of labour hire and widespread wage theft.

The MUA submission provides a thorough explanation of FOC shipping and the problems it creates. The features of FOC shipping such as the intricate corporate arrangements and precarious employment are very similar to the arrangements that have been reported to inquiries undertaken in Queensland into labour hire⁴ and wage theft⁵. Labour hire has exceeded its traditional use and evidence was provided to the parliamentary inquiry of elaborate contractual and corporate arrangements being used to avoid the normal obligations of an employment relationship⁶. Similarly, and in some cases coincidentally, the wage theft inquiry was provided details of similar arrangements to shift responsibility to contractors, subcontractors and franchisees. These practices were described by the literature as “fissuring”⁷. These structural changes have manifested in complex structures and intricate supply chains that are now associated with a range of industries⁸.

Consistent with the evidence provided to the wage theft and labour hire inquiries in Queensland, the MUA submission highlights some of the consequences for workers and the ongoing deleterious impacts of this fissuring. Fatigue and associated workplace health and safety concerns are not only of concern to the workers involved but the potential for environmental and public safety crises make any of the dangers associated with shipping manifold. Precarious employment is a concern and has a detrimental impact on the well-being of workers, but as was seen in the wage theft and labour hire

⁴ Inquiry into the practices of the labour hire industry in Queensland Report No. 25, 55th Parliament Finance and Administration Committee June 2016

⁵ A fair day’s pay for a fair day’s work? Exposing the true cost of wage theft in Queensland Report No. 9, 56th Parliament Education, Employment and Small Business Committee November 2018

⁶ Thai, P (2012) “Unfair dismissal protection for labour hire workers? Implementing the doctrine of joint employment in Australia” Australian Journal of Labour Law 25; Underhill E (2013) “The challenge of workplace health and safety and the changing nature of work and working environment” in Australian Workplace Relations Cambridge University Press Sydney 2013

⁷ Macdonald, F, E Bentham and J Malone (2018) “Wage theft, underpayment and unpaid work in marketized social care” The Economic and Labour Relations Review Vol 29 (1); Weil, D (2011) “Enforcing Labour Standards in Fissured Workplaces: The US Experience” The Economic and Labour Relations Review 22 (2); Weil, D (2018) “Creating a strategic enforcement approach to address wage theft: One academic’s journey in organizational change” Journal of Industrial Relations 60 (3)

⁸ Parliament of Australia (2017) Report Corporate Avoidance of the Fair Work Act Education and Employment References Committee Commonwealth of Australia 6 September 2017; Thornthwaite, L (2017) “The living wage crisis in Australian industrial relations Labour and Industry 27 (4)

inquires, has the knock-on effect of stifling complaints about working conditions and health and safety concerns⁹.

The major difference between some of the cases that were highlighted in the wage theft inquiry and examples provided by the MUA in this inquiry is the profit margins associated with the industries concerned. Whilst by no means justifying the practice of wage theft in industries with lower profit margins, it is almost impossible to imagine the necessity for reducing labour costs to such an extent in, for example, the extraction of bauxite and refining of alumina. As the MUA submission highlights this is an extremely lucrative undertaking in which a multinational company exploits the natural resources of Queensland and it is reasonable to expect reasonable returns to the owner of these resources in the form of well-paid and secure employment for workers in Queensland.

In the case of shipping the policy of the current Australian government appears to be to allow the industry to simply disappear. The neo-Liberal logic is that foreign shipping is more cost effective and therefore should be preferred to its Australian counterpart. The loss of well-paid Australian jobs is of no consequence to the current federal Government. Neither is it surprising that the potential for environmental disasters does not figure highly as a concern for the current Australian Government. What is puzzling however is that the Australian Government accepts the risk to national security that is associated with complete reliance on foreign vessels.

Closely associated with the decline of the Australian shipping industries are grave concerns for Australia's energy and border security. An absence of an energy security policy leaves Australia vulnerable in a crisis with 98 per cent of our transportation and defence reliant on liquid fuels¹⁰. The MUA submission to this inquiry also references submissions made by the Department of Immigration and Border Protection to the Senate Inquiry into the *Increasing use of so-called Flag of Convenience Shipping in Australia* in 2015. As the MUA rightly points out in its submission to this inquiry, the concerns raised by the Department of Immigration and Border Protection are in stark contrast to the

⁹ Clayton, A, R Johnstone and S Sceats (2002) "The Legal Concept of Work-Related Injury and Disease in Australian OHS and Workers' Compensation Systems" Australian Journal of Labour Law 15; Crawley, M (2000) "Labour Hire And The Employment Relationship" Australian Journal of Labour Law 13; Hall, R (2002) Labour Hire in Australia: Motivation, Dynamics and Prospects Working Paper 76 ACIRRT University of Sydney; Owen, R (2002) "Decent Work for the Contingent Workforce in the New Economy" Australian Journal of Labour Law 15; Reeve, B and R McCallum (2011) "The Scope of Employers' Responsibilities under Australian Occupational Health and Safety Legislation" Australian Journal of Labour Law 24; Roles, C and A Stewart (2012) "The reach of labour regulation: Tackling sham contracting" Australian Journal of Labour Law 25; Rozen, P (2013) "'But it's not safe!': Legal redress for workers who are victimised for raising a safety issue at work" Australian Journal of Labour Law 26; Watson, I, J Buchanan, I Campbell and C Briggs (2003) *Fragmented Futures: New challenges in working life* Federation Press Annandale 2003.

¹⁰ Hepburn, S Explainer: what is energy security, and how has it changed? The Conversation 13 September 2018.

security check required by Australian maritime workers to obtain the mandatory Maritime Security Identification Card.

In summary the replacement of Australian seafarers with FOC vessels is remarkably similar to the evidence of exploitation in other recent parliamentary inquiries in Queensland. The QCU supports the submission of the MUA to this inquiry and in so doing draws the comparison with those inquiries in which the Queensland Parliament and/or Queensland Government has been able to identify and address issues facing working Queenslanders. The following section of this submission briefly addresses the specific issues raised by this inquiry.

The regional economic development and labour market benefits of a sustainable intrastate shipping industry in Queensland;

The existence of decent paying jobs in regional areas has an obvious benefit for economic development. In terms of population, Queensland is the most decentralised jurisdiction in Australia which brings with it challenges for policy makers to ensure the vitality of regional centres.

Maritime unions have for some time raised concerns with the labour market implications of a dwindling shipping industry. Many of the skills that are associated with the maritime industry are likely to disappear forever if there is a continued decline in employment in this area. As has been previously stated, the maritime industry is strategically important and not having the skills within Queensland and Australia will ensure a continued reliance on foreign shipping and crews.

Current intrastate coastal shipping task and identify any barriers and options to strengthen the intrastate shipping industry;

It is absurd that workers who operate within our territorial waters are not paid in accordance with minimum entitlements. There is an obvious competitive advantage to any operator who is providing substandard pay and conditions for their workforce.

The MUA submission to this inquiry advocates the restoration of a strengthened Restricted Use Flag (RUF); adaption of the Queensland Freight Strategy; use of the Queensland Government procurement policy; and effective and efficient forms of industry assistance. The QCU supports the MUA recommendations.

Queensland’s contribution to, and the need for, an Australian inter-state shipping industry, and identify ways in which Queensland could contribute to improving the Australian inter-state shipping industry;

The MUA submission encourages the Queensland Government to advocate reform to the Australian Government particularly with respect to the Liquid Fuel Security Review. The QCU supports the MUA recommendations.

Opportunities for future common user port infrastructure, and any adjustments to the provision of port services, to support the viability of a regular intrastate freight shipping service;

There are range of strategies that have been discussed under the second heading “Current intrastate coastal shipping task and identify any barriers and options to strengthen the intrastate shipping industry”. The QCU also recommends that representatives of government of the states and Northern Territory confer with a view to establishing a regime of nationally consistent port fees and charges, and access, for Australian coastal shipping, applicable to both cargo and passenger ships.

Charges and access that favours vessels crewed by local seafarers would encourage companies to contract Australian coastal shipping vessels, with subsequent benefits to management of environmental risks, as well as providing local jobs and ancillary services.

The framework for any appropriate legislation or regulation might be similar to the current Queensland procurement policy that identifies how local and regional enterprise might benefit through government activity, in this case facilitating the movement and sale of mineral resources.

Working conditions and safety practices on current coastal shipping vessels, comparing international vessels to Australian vessels;

As referred to above the MUA submission provides details of the substandard conditions, by comparison to Australian conditions, operating on international vessels.

Any practices that are being used to erode working conditions, such as entitlements and legislative protections that currently apply to employees in the industry;

As referred to above, the MUA submission provides detail of the FOC shipping that has increased dramatically at the expense of the Australian shipping industry.

Options for legislative, regulatory or policy reform that could strengthen the intrastate shipping industry, and ensure that Queensland's labour market would benefit from this expanded industry, considering current Commonwealth legislation, reviews and constitutional limitations;

The MUA submission recommends that the Queensland Government advocates for reform of Australian coastal shipping to ensure that regular shipping takes place on safe ships with decent working conditions. The QCU supports that recommendation.

Options for legislative, regulatory or policy reform to maintain the safety, rights and protections of workers in Queensland ports and maritime industry; and

A range of strategies have been discussed under the second heading "Current intrastate coastal shipping task and identify any barriers and options to strengthen the intrastate shipping industry".

Options to minimise any potential impacts on the Great Barrier Reef from a strengthened intrastate shipping industry

Fatigue is major cause of shipping disasters. FOC shipping has long been associated with problems of fatigue. In an example, the owners and insurers of a Chinese coal carrier that ran aground on the Great Barrier Reef in 2010 had, for six years, refused to accept responsibility for restitution. The owners argued the reef was self-healing and the company shouldn't have to pay the bill, which the federal government estimated at \$120m¹¹.

¹¹ Owners of Chinese ship that ran aground on Great Barrier Reef agree to pay \$39.3m The Guardian 19 September 2016

The QCU supports the MUA recommendations including reviewing the actions set out in Reef 2050 Plan and the North East Shipping Management Plan to manage shipping impacts on the Great Barrier Reef.