



All we want for Christmas is ...

By ROD NAIRN

A key function of SAL is to provide the shipping industry perspective on new policies and regulations under consideration by the Government; this is certainly something we do well. By putting the effort into providing considered shipping industry advice and by highlighting the consequences of inappropriate decisions, SAL's efforts are able to save the industry a lot of pain before it gets to be a public debate or a fight to change the regulatory implementation. We may feel like free consultants to the Government but SAL's engagement with Federal and State governments in around 30 government committees, consultative councils and working groups pays dividends by solving problems before they arise. We have to be actively engaged early, as once the Government makes a public announcement, things become far more difficult to change.

The retirement of Kushy Athureliya in the previous December certainly upped the January challenge as responses to five government consultation papers were required to be prepared and submitted before Australia Day. I have become accustomed to the way that government departments send out their consultation papers as Christmas presents, and require industry consultation responses in time for them to return from their annual break in late January, let's see how it goes this year. In any case, I was certainly **very pleased to welcome Captain Melwyn Noronha** to the team in early February, to help share the load and he hit the ground running, particularly with the New South Wales EPA consultation over sulphur content in marine fuels.

The year 2015 will have to go on record as a year of frenetic activity

but not one for results. Price increases in monopoly port services, states rush to cash in on port privatisations, the hope of positive change for Federal coastal shipping legislation, the long-awaited outcome of the Harper Competition Review, a new maritime arrivals system and hope for an upturn in container shipping rates, were all in the offering. Unfortunately the positive outcomes were slim.

Throughout the year we have continued to have **close interaction with the Federal Government**. At the highest level SAL has engaged in meetings with Ministers in Treasury and Infrastructure and had direct correspondence with all cabinet Ministers and key independent Senators. Our continued participation in the Department of Agriculture and Water Resources' Customer Consultative Council (DCCC) and Import Industry Finance Consultative Committee (IIFCC) have helped to ensure that outcomes of various new initiatives and reviews take the views of shipping companies into account. While the Australian Maritime Safety Authority has been less vocal this year, participation in the AMSA Advisory Council has yielded high-level insights and provided the opportunity to highlight where other government actions might negatively impact on shipping and on Australia's IMO compliance. One current aspect is the Great Barrier Reef Marine Park Authority's decision to place a charge on tourist vessels merely transiting the reef. SAL has submitted that this is illegal as it impedes the right of innocent passage. At the time of writing a response is still awaited.

SAL participation in the (former) Customs and Border Command

National Consultative Committee has ensured that we get to provide input at the earliest stage of development of strategies for implementation and enforcement. The future of this forum is still being reviewed since the creation of the Australian Border Force, and **SAL has suggested the combination of disparate departmental consultative forums into a more whole-of-government approach**. So it is timely that most recently SAL was invited to join the National Committee for Trade Facilitation, which possibly provides this opportunity. The NCTF was established as a requirement of Australia's ratification of the WTO agreement. This committee is in its infancy but has a broad industry sector and government membership with the potential to drive whole-of-government approach towards simplifying trade administration. Encouragingly, one item already on the worklist is the development of a government single-window portal.

This year started with much of the industry still in shock over the 60 per cent increase in coal ship navigation charges and the accompanying 3.7 per cent rise in other charges, at the Port of Newcastle. Despite appeals to the Port and the Minister, there has been no ground given on this and we now wait with certainty for their second promised 3.7 per cent rise in all charges, to take effect on 1 January 2016. There are (theoretically) two types of external review available for monopoly pricing of corporations in New South Wales, the Independent Pricing and Review Tribunal and the Australian Competition and Consumer Commission. SAL approached IPART directly but was advised that we are not able to seek

review, it must be referred by the Premier, so we raised our concerns with the Minister for Ports. The response indicated that the Minister was in discussions with the Port, but there would be no IPART review, and we have seen no reprieve.

That was not the end of it. SAL consulted with the NSW Minerals Council and we found some common ground. Ultimately, Glencore made a formal application to the National Competition Commission for listing of shipping channel services at Port of Newcastle under Part IIIA of the Competition and Consumer Act and SAL was pleased to provide a supporting submission. The draft report was not promising, but supplementary submissions have been made and at the time of writing the final report is with the Minister for review. The outcome will be known by 9 January 2016, 60 days after the final NCC report was handed to the Minister. If the Minister has not made a statement by then he will be deemed to have decided not to declare the service.

The New South Wales State election brought with it **another shipping shock** as the Premier made a play for the inner-west Balmain popular vote, with a promise of regulating low-sulphur fuels for cruise ships within frighteningly short timeframes. The play lost with the electorate going to the Greens, but the regulation won and despite the NSW EPA's strategic plan acknowledging that changes to shipping requirements should be cognisant of IMO timeframes, we already have new regulations placing strict limits on fuel sulphur-content for cruise ships in Sydney. Realistically, SAL understands that avenues for exemption have been provided to allow non-compliant ships to maintain their visit schedule provided they have plans for future compliance.

But wait, there's more... much more

SAL had worked closely with the previous Government over the development of a new Biosecurity Bill which lapsed when the Government changed in 2013. Its revitalisation and introduction to Parliament early this year was not unexpected, but it was disappointing to find that **a new chapter on ballast water management** had been added without consultation. While that is water under the bridge, pardon the pun, as the Biosecurity Act 1915 is now law, SAL is engaging closely with the Department of Agriculture and



Water Resources to ensure that the supporting regulations are reasonable and workable before the Act enters into force in June next year.

With lessons learned from the privatisations in Brisbane, Botany and Port Kembla, and Newcastle, Shipping Australia was ready to respond when the Victorian Government introduced the **Port of Melbourne privatisation** legislation to Parliament. SAL strongly criticised particular aspects of the legislation and raised concerns relating to the lack of a clear Victorian plan to accommodate larger ships, exclusions of some services from price controls and the cost impact of the up-front capitalisation of the future PLF revenue stream. These concerns were raised with both the Government and the Opposition, and SAL also appeared at hearings of the Legislative Council Select Committee.

SAL was not alone in these concerns and became the spokesperson for an ad hoc "coalition of logistics industry parties opposed the privatisation legislation", initiated by Asciano. Opposition to various aspects of the Bill came from all sectors: shipping companies, peak shippers, stevedores, the Federal Government and the ACCC. One thing that does stand out is that when a government is dependent on Opposition support to pass a Bill there is a strong possibility that the proposed legislation will be more transparent, properly scrutinised and result in a more balanced outcome than when a strong majority government can simply set their own rules.

The result of the committee deliberations was to be tabled in Parliament by 30 November and will no doubt set the tone for further debate and amendments in the Victorian Parliament in the New Year.

While we have been focussed on Victoria, **the Port of Darwin was quickly sold** to the Chinese company, Landbridge. The sale will possibly cause some headaches for our most strategic northern Defence port, but the planned injection of Chinese capital could yield some big advantages for the future capacity and infrastructure. SAL is now looking westward and expecting legislation to enable the sale of the Port of Fremantle to be introduced to parliament in the near future.

It is certainly no secret that for the shipping industry, **2015 has been one of the toughest on record**. With dry bulk rates and dry container rates toughing 30 year lows and a drop-off in demand for break bulk, many of our members are struggling to survive. The industry is talking of mergers, acquisitions and withdrawals from sectors, and it is essential that SAL gets the message out that enough is enough with respect to unrealistic port costs and pilotage rate increases. You might argue that volume differentiation explains why Australian ports are five times more expensive than those of Malaysia, but that argument collapses when you realise we are twice as expensive as New Zealand! It comes down to a lack of competition. Monopolies are not driven to cut costs to attract business and most of

our ports are geographic or commodity monopolies – ships just have to use them, so there needs to be strong regulatory oversight.

The **rapidly increasing cost of pilotage** in particular, is continuing to be a real cost burden on shipping companies operating in lean times. SAL raised concerns over pilotage increases in Melbourne, where regular increases in these charges consistently and significantly exceed CPI. Most recently we have seen a restructure of the way pilotage is charged at the Port of Newcastle resulting in a range of extraordinary increases. The principles of the new pricing structure are certainly sound, but the cost impact of the changes: 300 per cent for small operators, 40 per cent for the big ships (and I am told that some vessels will actually see a reduction) are generally unpalatable. The question must be asked, **is it time for the Government to focus on safety and regulation rather than service delivery and encourage competition and innovation in pilotage?**

It's not only pilotage where the port services fees are unreasonable. The Port Authority of New South Wales has advised general fee increases of 4.7 per cent - that's 2.8 per cent above the Sydney CPI increase for the year to September 2015, why? One of the reasons is that **the New South Wales Government demands that the Port Authority of New South Wales not only cover its costs, but it must also return a dividend** to the Government. A reasonable tax-payer would have thought that ensuring maritime safety and facilitating maritime trade through New South Wales ports, which generates billions of dollars for the New South Wales economy, would be an essential public service, not a cash cow to milk dry. I am reminded of the story of the goose that laid the golden eggs.

One policy decision that could have breathed some life into the shipping industry by increasing volumes of coastal cargo, is the **amendment of the Coastal Trading Act**. We have now seen the process of review and development of amending legislation go on for more than two years and as I write, the Shipping Legislation Amendment Bill has just been defeated in the Senate, despite the report of the Senate Inquiry which recommended that the Bill be passed. It is a great disappointment for Australian industry and primary producers to see the demise of a chance to improve the efficiency of domestic trade, reduce import substitution and save Australian jobs. This outcome is a reminder of the disproportional power of independent senators and union minority lobby groups.

Even Senators speaking against the Bill recognised that the existing Coastal Trading Act is ludicrously unwieldy and inhibits effective movement of domestic cargo by sea, and Shipping Australia urges the Government to make it a priority to continue its efforts to change coastal shipping legislation, for the good of Australia. Ideally, we would prefer to see a bilateral solution that would ensure stable shipping legislation into the future, but that might be too much to ask.

SAL has also expended a lot of effort on submissions and follow-up consultations relating to the review of shipping competition exemptions, as part of the **Harper Competition Review**. In late November, the Government published its omnibus response to the review which noted that the Government "remains open to the Harper Review recommendation" to replace the existing Part X of the Competition and Consumer Act with a block exemption. This means that implementation will be considered following further review.

Yes, we would have preferred the Government to dismiss the recommendation and commit to retaining the current legislation, but at least there is recognition that further consultation is required before a final outcome is decided. No block exemption can provide the certainty of the current Part X legislation, and certainty is something the shipping industry needs right now. In any case, Shipping Australia is committed to working closely with the Government and the ACCC to develop a comprehensive and workable block exemption that would encourage international shipping companies to continue to trade to and from Australia.

As we reach the end of the year, endemic oversupply in the container trade continues to haunt the industry, and keeps rates at record lows. The advice that NYK will pull out of the container trade was a bitter pill and takes with it 160 Australian jobs in the shipping sector. Other global rumours abound with the expectation there will be formal news of a merger between COSCO and China Shipping, any day now. Globally, there are other mergers and takeovers mooted as financial worries bite.

In these uncertain times the cruise industry shines brightly and I congratulate P&O on their five ship spectacular and Port Authority of New South Wales on its ability to host the entire P&O Australian fleet in Sydney Harbour on 25 November.

All we want for Christmas is rate restoration, decent coastal shipping legislation and price restraint in monopoly government and private port service providers. On that note it is encouraging to see that tenders have been called for a second towage operator in Port Hedland, so perhaps there will be competition out west. ▲

MANDATORY CONTAINER WEIGHT DECLARATIONS

The IMO Maritime Safety Committee has now confirmed that changes to SOLAS regulations requiring mandatory container weight declarations will be implemented with effect 1 July 2016.

The regulation puts the onus of accountability for weight declarations squarely on the shipper, and clearly they will bear the responsibility if further checks down the line find that declaration to be in error.

AMSA, SAL and industry stakeholders are working towards implementation.





Policy Council members attending end of year meeting, 4 December 2015

Policy Council members

A.P. Moller-Maersk A/S
Mr Anthony Randell

APL Lines (Australia)
Mr Veni Patakakis

Asiaworld Shipping Services Pty Ltd
Mr Ken Fitzpatrick

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BBC Chartering Australia Pty Ltd
Mr David Begg

CMA CGM & ANL Australia Pty Ltd Agencies
Mr Simon Aynsley

Evergreen Marine Australia Pty Ltd
Mr Murray Read

Five Star Shipping & Agency Co Pty Ltd
Mr Bryce Henley

Gulf Agency Company (Australia) Pty Ltd
Mr Scott Henderson

Hamburg Süd Australia Pty Ltd
Mr Peter Creedon

Hapag-Lloyd (Australia) Pty Ltd
Mrs Lena Christenson-Duus

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Mr David Pratt

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Mr Ross McAlpine

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Mr Mark Austin

Monson Agencies Australia Pty Ltd
Mr Travis Monson

Neptune Pacific Line
Mr Rolf Rasmussen

NYK Line (Australia) Pty Ltd
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OOCL (Australia) Pty Ltd
Mr Eddy DeClercq

Pacific Asia Express Pty Ltd (PAE)
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