Australian Peak Shippers Association Inc.

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ROOT & BRANCH REVUE OF COMPETITION LAWS & POLICY 2014.

Second submission by the Australian Peak Shippers Association Inc. (APSA) to the Review Panel (Harper Review) in response to the Draft Report issued by the Review Panel.

This submission is specific to clause 3.3.5. In the Scope which refers to immunities to providers of Liner Shipping Services as referenced in Part X of the Australian Competition & Consumer Legislation of 2010 (formerly the Trade Practices Act 1974).

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SUMMARY OF RECOMMENDATIONS.

This submission deals solely with the Harper Revue Panel's Draft Report recently released and is specifically focused on **Section 17.5 LINER SHIPPING EXEMPTION UNDER PART X OF THE CCA (Pages 236 to 240).**

After reading the section specified above APSA is somewhat disappointed that so little time and space was devoted to this very important piece of legislation that affects an industry that significantly contributes to Australia's GNP.
Whilst we appreciate the enormity of the task laid before the members of the Revue Panel and that perhaps the time allocated for the consideration of all submissions was somewhat limited we feel that more face-to-face consultation with the stakeholders in this particular industry could have been forthcoming prior to the Panel releasing its Draft Report.

Consequently we feel that the recommendations made in the Draft Report in relation to Part X need further consideration.
We strongly recommend that the following points, as detailed in our first submission be tabled once again and vigorously explored:

1. That the Registrar of Liner Shipping within the Department of Infrastructure & Transport – Marine Division continue to control the administration of Part X because it has established a record over the many years since inception of efficiency, minimal red tape, cost effectiveness and hence full participation and cooperation from all shipping lines, their particular consortia and Discussion Agreements and Vessel Sharing Arrangements. **We are concerned that handing over the administration to the ACCC with their limited knowledge of the industry and it machinations will lead to drop in confidence of the system and hence reduced participation and instability.**
2. The current arrangements under the guardianship of the Registrar of Liner Shipping afford shippers through APSA full exposure to and the opportunity in each case, to seek negotiation with Vessel Sharing Arrangements if it is felt that shippers are disadvantaged. This process brings the shipping lines to the table to discuss and negotiate a suitable outcome. **We worry that this will not be available under an ACCC regime.**

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3. Under Part X shippers have successfully negotiated agreed formulas that set limits on the movements of Bunker Adjustment Factors (BAFs) which are calculated on a weekly basis and must exceed set parameters for a minimum of 4 weeks in a row and then shippers must be afforded a minimum of 30 days written notice prior to the revised BAF being adopted. **We don't want this to be lost as it provides shippers with certainty surrounding cost structures.**
4. Under Part X Minimum Levels of Service (MLS) have been established relative to each and every Vessel Sharing Arrangement (VSA) that has been established and subsequently varied. These MLS refer to regular weekly sailings out of every major port in Australia, Nominated space to be made available on each sailing and sufficient levels of equipment of the size and condition required. **It is essential that this be retained to give shippers comfort that they can offer their customers certainty of delivery on a regular basis.**

Further we recommend that the Revue Panel keep in mind that whilst Australia's exports in our eyes are substantial, when compared to the volumes moved on an international scale, are really not sufficient for the international shipping lines to be able to viably carry on a stand alone basis. For the lines to be able to successfully support our exports they need to be able to share their resources. This they can do under Part X and whilst we recognize that the Panel have alluded to "block exemptions" to facilitate this requirement there is nothing in the report that mandates that this be so. It is left to the discretion of the ACCC as to whether they afford the VSAs this concession. **We recommend that this be a compulsory concession.**

We note with interest that the Revue panel has recommended a period of two years would be required for transitional arrangements relating to existing agreements. We would recommend that this two year period be used to facilitate a full review before any decisions be made as to the fate of Part X.
This industry is unique and does not fit into the "one size fits all" category. Careful consideration of the full consequences of changes being lobbied for and consultation with all parties involved in the industry is essential to get the correct outcomes for the industry going forward.

Finally we recommended in out first submission that there was a need for review of certain aspects that currently adversely affect shippers. They being:

1. That the exemption afforded the various Discussion Agreement that allows them to discuss sea freight rates and publish recommended general rate increases (GRIs), albeit that any published GRIs are not binding on their members, should be rescinded as they amount to "price signaling" to the market.

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2. The setting of freight surcharges by shipping lines, consortia and/or alliances should no longer be exempt from scrutiny under the current legislation. These surcharges, as detailed in out previous submission, are plentiful and are randomly instituted by the lines with little or no justification. They amount to a clandestine method of increasing freight rates.
3. The charges set by the servants of the shipping lines i.e. the stevedoring companies, who have substantial power as they control the major ports, need to be scrutinized and included in legislation. These charges are not transparent and are passed onto shippers via the shipping lines with a cost plus factor built in.

We recognize that Part X has been in operation in its present form for long period of time and we contend that during that time it has served this industry well being the vehicle that has afforded shippers a high degree of stability and the knowledge that they can confidently pursue contracted sales with their international customers. We also recognize that the time has come for a full and detailed revue but we strongly urge the Revue Panel to ensure that if changes are to be made they are made for the right reasons, that being to strengthen even further the ability of Australian shippers to prosper in their endeavors. The notion that this industry needs to be brought into line with all other industries from a legislated competition point of view just to streamline the system could and will have lasting adverse affects.