



Parliament of Tasmania

LEGISLATIVE COUNCIL

SELECT COMMITTEE

PUBLIC DISCUSSION PAPER ON

Adequacy of Current Transport Services

ISLAND TRANSPORT SERVICES

Members of the Committee

Hon Tania Rattray-Wagner MLC (Chair)

Hon Ruth Forest MLC

Hon Greg Hall MLC

Hon Paul Harriss MLC

Secretary: Dr Colin Huntly

Table of Contents

INTRODUCTION	3
APPOINTMENT AND TERMS OF REFERENCE.....	3
PROCEEDINGS TO DATE.....	3
THIS PUBLICATION.....	3
BRUNY ISLAND	4
FURNEAUX GROUP OF ISLANDS	4
<i>Public Debate</i>	4
<i>Committee Inquiries</i>	5
<i>Questions Arising</i>	5
<i>General Issues</i>	7
KING ISLAND	8
APPENDIX A	10
SAMPLE OF PRINT MEDIA.....	10
APPENDIX B	16
DEED OF AGREEMENT BETWEEN THE TRANSPORT COMMISSION, SOUTHERN SHIPPING CO PTY LTD AND MR GEOFFREY GABRIEL.	16
APPENDIX C	33
LEGAL OPINION:.....	33
RIGHTS OF FINANCIAL INSPECTION UNDER A DEED OF AGREEMENT BETWEEN THE TRANSPORT COMMISSION, SOUTHERN SHIPPING CO PTY LTD AND MR GEOFFREY GABRIEL.....	33

INTRODUCTION

APPOINTMENT AND TERMS OF REFERENCE

The Select Committee on Island Transport Services was appointed by Order of the Legislative Council on Wednesday, 10 June 2009 with power to send for persons and papers, and with leave to adjourn from place to place, to inquire into and report upon transport services to King Island, the Furneaux Group and Bruny Island, with particular reference to:

- (1) the adequacy of existing transport service arrangements;
- (2) the impact of existing transport service arrangements including the associated infrastructure on the community, business and industry;
- (3) the identification of strategies and options to enhance the level of service; and
- (4) any other matters incidental thereto.

PROCEEDINGS TO DATE

Advertisements were placed in the three regional daily newspapers on Saturday, 20 June 2009, and in the King Island Courier, the Bruny Island News and the Flinders Island News at the next available publication date, and called for submissions and evidence regarding the Committee's full terms of reference, with a closing date for submissions on Friday, 24 July 2009.

To date, the Committee has received 42 written submissions, has held one day of public hearings on Bruny Island, and one day of public and private hearings in Hobart.

The Committee will hold public hearings on King Island on Tuesday, 4 November 2009 and on Flinders Island on Wednesday, 5 November 2009.

THIS PUBLICATION

The small sample of print media commentary relating to Island transport issues included at Appendix A to this paper suggests to this Committee that there is a genuine public interest in the issues raised in the Order of Reference.

Island transport services are relevant to the entire Tasmanian community. The relevance to those residents who live and work on our islands is obvious and, as such the Committee is taking care to consult closely with those communities. However, as recent events have highlighted, the quality and accessibility of adequate systems of transportation to and from our Island communities is very much of relevance to each and every Tasmanian.

The livelihoods of individuals and companies on the smaller islands and on the main island very much depend on optimal systems of transportation. Given that the State Government has an overarching responsibility to provide minimum infrastructure to all Tasmanians, in a financial sense at least, the entire community has a stake in ensuring the most effective and efficient provision of such infrastructure.

Since the Committee commenced its enquiries, there have been changes in the public debate concerning island transport services. In order to ensure that the inquiry retains maximum relevance, the Committee has decided to issue this Public Discussion Paper regarding the provision of adequate, affordable transportation systems to and from the Islands.

BRUNY ISLAND

As noted above, the Committee held one day of public hearings on Bruny Island on Thursday, 1 October 2009. The transcripts of those hearings are available on the Parliament of Tasmania Website at:

<http://www.parliament.tas.gov.au/ctee/Council/isltransport.htm>

FURNEAUX GROUP OF ISLANDS

As noted above, the Committee is yet to hold public hearings on Flinders Island. However, in recent weeks there has been a large amount of public comment about current minimum shipping service provision to and from the Island. A copy of the Deed of Agreement Between the Transport Commission, Southern Shipping Co Pty Ltd and Mr Geoffrey Gabriel is reproduced at Appendix B.

The Committee had expected to hear from the Managing Director of Southern Shipping Co Pty Ltd, Mr Geoffrey Gabriel at a public hearing in Hobart on Friday, 2 October 2009. Mr Gabriel advised the Committee on Thursday, 1 October 2009 that he was too ill to attend the following day.

Public Debate

The Committee notes media reports at Appendix A (p12), that TasPorts suspended Southern Shipping's licence on Thursday, 1 October 2009 for non-payment of berthing fees. On learning of this matter, the Committee requested a briefing on Friday, 2 October 2009 from senior officials from the Department of Infrastructure, Energy and Resources. The Committee was grateful to these officials for their availability at extremely short notice.

The information received was helpful in obtaining an overview of the history and structure of the service contract between the Transport Commission (on behalf of the Minister for Infrastructure). However, the Committee formed the view that the briefing left a number of questions unanswered, especially with respect to the operation of the contract. As a consequence, the Committee has subsequently undertaken its own further inquiries.

Committee Inquiries

The first inquiry made by the Committee was to obtain a commercially available credit report on Southern Shipping. The information revealed by this basic inquiry was of such concern that the Committee resolved to obtain a legal opinion concerning the operation of the service contract. That legal Opinion, which was produced by Mr Colin Adams, partner in charge of the commercial litigation section of Page Seager Lawyers in Hobart, is reproduced in full at Appendix C to this paper.

The questions posed to Mr Adams were as follows:

- a) *Under what circumstances can the Transport Commission activate its powers of financial inspection at subclauses 6.1 (g)(h) and (i) of the "Deed of Agreement" dated 18 July 2007 (the "Deed")? For example, does the Deed anticipate that such powers will only be exercised in the event of an actual, or apparent, breach of the Deed?*
- b) *Are the powers of financial inspection under the Deed, referred to in question 1 above, limited in any way? If so, to what extent? For example. Are the entire financial affairs of SSC reviewable?*
- c) *By reference to subclause 17.3 (e), as read within the context of the Deed as a whole, what conduct of Southern Shipping Co Pty Ltd (if any), would place a reasonable debtor or creditor on notice that the company may be trading while insolvent, or be unable to pay its debts as and when they become due?*

The Committee has resolved to make this information public, in order to inform public debate, and to give further opportunities for concerned individuals and organisations to make a contribution to the Committee's inquiry.

The key issues pertaining to the current shipping service contract, in relation to the Furneaux Group of Islands that have been raised at this point in the inquiry can be summarised as follows:

Questions Arising

- Does the Deed in its present terms, adequately meet the reasonable requirements for basic transport infrastructure for the people and businesses of the Furneaux Group of Islands?

- Does the service provision under the Deed represent quality and value for money for the people of Tasmania?
- Is the Deed of Agreement Between the Transport Commission, Southern Shipping Co Pty Ltd and Mr Geoffrey Gabriel adequately drafted in its own terms as a commercial agreement for the delivery of community service obligations?
- In terms of prudent standards of commercial practice and by reference to the terms of the Deed of Agreement Between the Transport Commission, Southern Shipping Co Pty Ltd and Mr Geoffrey Gabriel, has the Transport Commissioner made appropriate use of their powers of financial inspection at Clause 6.1 of the Deed?
- Did the Transport Commissioner give their consent for the Southern Shipping vessels to become encumbered in favour of the Commonwealth Bank of Australia on the 17th June, 2009 as is required at Clause 9(c) of the Deed? If yes,
 - At that, time would prudent commercial practice require the Transport Commissioner to conduct the kind of financial inspection envisaged at Clause 6.1 of the Deed before granting consent?
- In the event that the Transport Commissioner did not grant consent for the Southern Shipping vessels to become encumbered in favour of the Commonwealth Bank of Australia on the 17th June, 2009, and given that s130 of the *Corporations Act 2001* provides that the Australian Register of Company Charges is a register to which constructive notice applies, would a reasonable Transport Commissioner have overlooked such a potential breach of the Deed?
- Given that the case of *Plymin*, discussed in the attached legal Opinion provided to the Committee by Mr Adams, establishes the following “*indicia of conduct and events which point to insolvency*”:
 1. *Continuing losses.*
 2. *Liquidity ratios below 1.*
 3. *Overdue Commonwealth and State taxes.*
 4. *Poor relationship with present Bank, including inability to borrow further funds.*
 5. *No access to alternative finance.*
 6. *Inability to raise further equity capital.*
 7. *Suppliers placing [company] on COD, or otherwise demanding special payments before resuming supply.*
 8. *Creditors unpaid outside trading terms.*
 9. *Issuing of post-dated cheques.*

10. *Dishonoured cheques.*
11. *Special arrangements with selected creditors.*
12. *Solicitors' letters, summons[es], judgments or warrants issued against the company.*
13. *Payments to creditors of rounded sums which are not reconcilable to specific invoices.*
14. *Inability to produce timely and accurate financial information to display the company's trading performance and financial position, and make reliable forecasts.'*

By reference to the above indicia and the publicly available information relating to the conduct of Southern Shipping, would a reasonable Transport Commissioner have cause to activate the powers of financial inspection at Clause 6.1 for the purpose of assuring themselves that there were no grounds to activate the termination provisions of the Deed at Clause 17?

General Issues

Some of the transport related issues raised in the written submissions received to date relating to the Furneaux Group of Islands can be summarised as follows:

Air Transport

- Cost of air fares.
- Scheduling difficulties especially regarding flights to Melbourne.
- Lack of coordination between transport services.
- Booking system is not of a sufficient standard.
- Freight costs very high (except for limited passenger flight top-up).
- Charter for freight is not economic for a number of reasons.

Sea Transport

- Concerns about the quality of service.
- Frequency of service insufficient.
- Lack of facilities on the island for appropriate storage.
- Wharf infrastructure in poor repair.
- Lack of complaint procedures re: customer service.
- Passenger facilities inadequate.
- Use of Bridport an issue due to tidal nature and need for additional handling of goods.

Suggestions

- Review of shipping services contract.
- Review of air fare subsidy.
- Review of freight transport subsidy.
- Alter air schedules to provide a better service for tourists and connection with other transport service.
- Link the Airlines of Tasmania booking service with other airlines.
- Allow wait lists for flights if they are full.
- Islanders use the formal complaint procedures mentioned in DIER submission.

KING ISLAND

As noted above, the Committee is yet to hold public hearings on King Island. However, the Committee is aware that the King Island community has concerns about the adequacy and affordability of transport services as a minimum requirement to ensure the long-term viability of the settlement.

Written responses to this Public Discussion Paper, or requests to give verbal evidence to the Committee at a public or private hearing should be addressed to:

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Legislative Council
Parliament House
HOBART 7000

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Written submissions become the property of the Committee and should not be disclosed to any party prior to the Committee's final report. The Committee's Terms of Reference are also available on the Parliament of Tasmania website (www.parliament.tas.gov.au), or by contacting the Clerk of Committees.

Hon Tania Rattray Wagner MLC
Chair

APPENDIX A

Sample of Print Media

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16 OCT 2009

Flinders service battle

MERCURY 2 Shipper in breach of contract: Sturges

NICK CLARK

THE Flinders Island shipping service Southern Shipping had breached the terms of its contract with the State Government, Infrastructure Minister Graeme Sturges said yesterday.

He said the Government would write to Southern Shipping and would be looking at "all sensible" options.

The alleged breach was related to the provision of services, he said.

A Southern Shipping vessel, Matthew Flinders, has been tied up at Lady Barron on Flinders Island since last Friday.

Five crew members have refused to move the vessel until they are paid about \$30,000 in wages they say they are owed.

The Flinders Island community is angry over the standoff because vital supplies required for today's Flinders Island show have been held up.

"I'm not happy with the circumstances and the plight that is confronting the community but what I must do is work within the parameters of the law," Mr Sturges said.

Southern Shipping director Geoff Gabriel said the company had not breached the

contract because the events were beyond its control (a force majeure). "We were there last Tuesday and back again on Friday, so it certainly fulfils the once-a-week requirement," he said.

Mr Gabriel said it was beyond the company's control that the crew members had not stuck to their contract.

He said he would refute the Government letter.

"The contract is explicit, they have got to give you notice and if you don't remedy the situation then they can cancel the contract," he said.

He said he had not yet received any notice.

"It has far reaching implications," he said. "For example, LD Shipping does not carry passengers to the island.

"The cost of airfares is huge and a lot of tourists go to the island with us."

Liberal MHA Peter Gutwein said Mr Sturges' move was better late than never.

"If it hadn't been for the Tasmanian Liberals, I suspect that he would never have bothered to understand what the Government's options were under the contract, such as inspecting the company's books," he said.

Critical supplies were delivered to Flinders Island yesterday

after LD Shipping's Statesman was able to tie up at the Lady Barron port. The Statesman had to wait a number of hours while the Matthew Flinders, which was blocking the wharf, was moved.

Mr Gabriel issued special dispensation for crew members of the Matthew Flinders to move the vessel.

On Wednesday night, police escorted skipper Percy Barnett off the vessel after a court order was granted in favour of Southern Shipping in the

Hobart Magistrates Court.

Earlier, the Tasmanian Ports Corporation issued Southern Shipping with an order to move the vessel by midday. It is understood the Statesman finally docked about 2.45pm.

Mr Gabriel said he would fly in crew to man the Matthew Flinders.

The company's other ship, Southern Condor, remained in Bridport and perishables were removed so they could be flown to the island.

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16 OCT 2009

Flinders service battle

MERCURY Minister in firing line over bungles

GRAEME Sturges has survived a second motion of no confidence, this time in relation to his handling of Flinders Island shipping.

The Greens expressed no confidence in the embattled Infrastructure Minister yesterday over a series of alleged failures, including the failure to produce an infrastructure plan, a failure to secure federal infrastructure funds and

trouble around the state's rail network.

Greens leader Nick McKim said the ongoing impasse with Southern Shipping was the last straw.

"The patience of the Tasmanian community has been tried severely by this bungling Infrastructure Minister, and this year-long debacle over the poor and unreliable shipping service to the Bass

Strait islands, and in particular Flinders Island has proven to be the last straw for many," Mr McKim said.

The Liberals moved a similar motion of no confidence in June over his handling of the rail crisis.

Liberal infrastructure spokesman Jeremy Rockliff said since then Mr Sturges' performance had worsened.

Mr Sturges has been under

fire for his behaviour outside the Parliament and had to apologise for abusing a security guard at an official TT-Line function.

However, Premier David Bartlett leapt to the embattled minister's defence, crediting him with securing the \$32 million takeover of the Tasmanian rail network.

Mr Sturges defended his performance.

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- 8 MAR 2009

Ebb and flow of ferry service

SUNDAY TASMANIAN KT7

ALICE CLARIDGE

BRUNY Island has long been a popular getaway destination for residents of Greater Hobart.

In recent years it has also been discovered by tourists.

Regardless of where they come from, almost all visitors make their way to the island onboard the vehicle ferry Mirambeena.

In over 50 years of operation, the service has seen many changes including the use of four different vessels.

The Mirambeena ferry is owned by the State Govern-

Cover story

ment, and has been chartered by the current company for 11 years.

Operator of the Bruny Island Ferry Company Pty Ltd, Graeme Phillips, said there had been a natural increase in the use of the ferry.

"More people are using their shacks more frequently, while the number of residents remains fairly stagnant," Mr Phillips said.

"Industry and tourism on the island has grown.

"There are also plenty of

grey nomads around, and log trucks now use the ferry."

Demand for the service peaked at Christmas, Easter and long weekends, he said.

"Unfortunately this can cause some traffic chaos," he said.

He said the car park areas had been extended to accommodate extra lanes of traffic on both sides of the Channel.

At peak times extra ferry trips were added, although the master in charge ensured staff still got their breaks.

"It is typical of a pseudo-style of public transport. Everyone wants to go at the

More people are using their shacks more frequently, while the number of residents remains fairly stagnant

same time," he explained.

The Mirambeena takes an average of 65 cars per trip, but caravans and trailers are not counted.

Mr Phillips says this makes it difficult to accurately estimate how many vehicles actually use the service over a period of time.

He said it had been dis-

cussed on many occasions as to how residents of the island could have priority use of the ferry service.

"It has been frustrating to try and work out," he said.

"In a report due in July, we will address the current fare structures and fare priorities.

Mr Phillips said some suggestions had been made which

would be considered, and the State Government would also have a say in future action.

"During the off periods the ferry is fairly empty.

"But during holidays, physically catering for the volume means people simply have to wait."

Flinders shipping furore

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-3 OCT 2009

MERCURY

NICK CLARK

THE Tasmanian Ports Corporation may suspend the licence of Southern Shipping, the firm which services Flinders Island, because of repeated late payment of berthing fees.

TasPorts chief operations officer David Phillips banned the *Matthew Flinders* from berthing at Lady Barron on Thursday night, forcing the ship to anchor offshore.

The company had unsuccessfully tried to pay outstanding fees on Thursday night, Mr

Dispute threatens island's sea link

Phillips said. The ship was eventually allowed to berth at Lady Barron yesterday after TasPorts accepted late payment of about \$20,000 in fees.

"There has been a pattern of non-payment over the past three years and Southern Shipping often only makes payment after TasPorts sus-

pends its licence to use our port facilities," he said.

Southern Shipping managing director Geoff Gabriel said the payment had been affected by a technical hitch.

TasPorts received the funds about 11am yesterday.

Mr Phillips said TasPorts would review its long-term

arrangement with Southern Shipping because of a history of late payment and a range of other breaches of its stevedoring licence.

He said future arrangements with a second shipping company would be examined if Southern Shipping's licence had to be suspended.

Southern Shipping has a State Government contract, worth about \$225,000 a year, to provide the service.

Flinders Island mayor Carol Cox said the island community had lost confidence in the

ability of Southern Shipping to provide an adequate service.

"We have been speaking to the Government for months because we don't think the service is meeting our needs," she said.

Mr Cox said the contract did not require enough crossings — just once a week at Flinders and once a month at Cape Barren Island.

"There is concern among stock agents about whether livestock can be moved off the island when it gets busy in November

and December," she said.

Tasmanian Farmers and Graziers Association chief executive Chris Oldfield said it was time owner Mr Gabriel shaped up or shipped out.

Flinders farmers are expected to lobby Premier David Bartlett today when he attends a function on the island.

A Government spokesman said Southern Shipping had a binding contract.

The ship is one of the two providing a service to Flinders Island.

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15 OCT 2009

FLINDERS SHIPPING ISSUES

Vessel captain evicted

EXAMINER 2

By SHELLEY SPENCER

THE WEEK-long stand-off over shipping services to Flinders Island came to a head last night when police evicted the captain of the *Matthew Flinders* from the vessel.

Captain Percy Barnett and his crew had refused to sail from Flinders Island back to Bridport following a dispute over alleged unpaid wages.

"I am devastated. It should not have gone this far," Captain Barnett said last night.

Following the seven-day

stand-off, which has been a disaster for residents of Flinders Island, Southern Shipping general manager and company director Geoffrey Gabriel responded with legal action and obtained a court order to remove Captain Barnett from the vessel.

Mr Gabriel said the strike was expected to cost him \$120,000.

The vessel has now been left without a master, and it is understood that it cannot be now legally moved.

LD Shipping left Bell Bay

yesterday, bound for Flinders, and is due to arrive early this morning with perishable items and products for tomorrow's show.

However, whether it can berth is now questionable.

A spokesman for Southern Shipping said last night that the company would be looking for a way to move the *Matthew Flinders* and make way for its other vessel, *Southern Condor*, today so that the company could continue to meet its contract obligations required for a government subsidy.

Flinders Island Council general manager Raoul Harper said yesterday that there were no guarantees as to what would happen.

"It has got to the point where the whole thing is farcical and the impact on the community is really terrible," he said.

Mr Harper said the council would no longer be supporting Southern Shipping and would use a private operator as well as LD Shipping instead.

- 2 MAR 2009

HOT TOPIC ► ROADS AND SAFETY **MERCURY** 15

Not convinced by patchwork

IT'S lovely to see such a concerted effort around the Hobart region, resealing and repairing the roads that have been neglected for way too long.

It does beg two questions though. How is it that after resealing dangerous dips remain in the road surface on the Tasman Highway on both sides of the Gordons Hill Rd bridge? And why does the resealing of local roads look so shoddy? It worries me that money is not so much being spent, as wasted.

Darren West
West Moonah

Slow flow

ANDREW Rae raises a very interesting point about the flow of traffic into Hobart on the Southern Outlet during the morning traffic snarl (Letters, February 25).

Despite asking the question constantly to politicians, no one can provide the answer on how a \$45 million single-lane bypass through Kingston can make the lights on Davey and Macquarie St change any quicker. The answer is that it won't and the traffic snarls will be longer and potentially more chaotic, as outlined in the Kingston and Environs Transport Study.

Perhaps, on the back of the Premier's waterfront vision including limitations on parking, it is really time to restrict the numbers of vehicles coming into Hobart on a daily basis instead of building more roads to bring traffic into Hobart quicker.

Phil Pyke
New Town

Catch the bus

REGARDING Andrew Rae's letter (February 25), another way to make it a lot quicker and easier to get to work from Kingston is if everyone who could catch a bus did

so. Or cycle twice a week as I do. It's a pity many people (and businesses) still think that a person in a car is more important than a person on a bike or in a bus. It takes time to change old habits but not many people drive home for lunch any more, do they? It's all part of growing up. The city, I mean.

John Hayes
Kingston Beach

Speeding missed

WHOSE idea was it to increase the distance of the 80km/h speed limit along the foreshore at Montrose to the incline at Berriedale where it becomes 100km/h?

I am sick and tired of almost being rear-ended by motorists travelling behind me. Coming up to the 100 limit, they accelerate up your rear and then sit right on your tail trying to push you to do the 100 before the limit starts. This is almost an everyday occurrence.

These speeding morons are going to cause a very nasty accident one day. I am not going to risk being booked for speeding just because they want me to go as fast as they do. Maybe the police should spend as much time on this side of the highway catching these people instead of hiding behind the bushes on the other side catching the ones who are a little slow at slowing to 80 coming down the hill towards the city.

Leonie McDonald
Austlins Ferry

Short but dangerous

INSTEAD of building miles of road through the Tarkine, why doesn't the Government upgrade the 1km of Ferry Rd, Kettering?

Almost unchanged since 1954, this road has lanes only about two metres wide, no footpaths and

virtually no verges. With more than 200,000 ferry passengers per year, log trucks, heavy-duty work vehicles, buses, campervans and cars are using a sub-standard road which is dangerous to traffic and pedestrians alike.

As the Government is spending \$8 million upgrading roads on Bruny Island because of increased traffic, why has Ferry Rd been completely ignored for so long?

Picton Hay
Kettering

Terrible mess

WE are appalled at the state of Ferry Rd, Kettering, and the seeping sewage that flows onto it.

Since we have lived here there have been many meetings with proposals and recommendations to widen, upgrade, boardwalk and sewer Ferry Rd — but nothing has been done.

To walk along the road any time is a hazard but to walk along at ferry time is a death trap. The poor pedestrians have to dodge logging trucks, commercial vehicles, caravans, motor homes, trailers, buses and cars.

Because the road is so narrow, the residents have difficulty accessing their driveways when there is a pile-up of parked and waiting cars.

The other problem is the sewerage, or lack of it. The leached grey water seeps down from the homes to lie and stagnate in the gutter. Many times the gutter is full of this smelly, oily sludge.

The Kingborough Council should put in place an overall development plan which would include the upgrading of Ferry Rd, access roads and the upgrading of the many pump-out sewerage systems we have in this area.

Ray and Elspeth Haughey
Kettering

LJSTAFY

02 SEP 2009

EXAMINER 2

By RACHEL WILLIAMS

A FORMER Southern Shipping worker has made sweeping allegations against the Bridport-based business, which is the subject of a Fair Work Ombudsman investigation.

Administrative clerk John Hunt yesterday said he quit his job at Southern Shipping after a week and has raised concerns with a number of workplace and shipping authorities.

Southern Shipping, which operates vessels to Flinders and King islands, has denied Mr Hunt's claims that it is trading while insolvent.

It would not be drawn on Mr Hunt's other allegations, including insurance and safety issues.

"I am saying nothing — the matter has been handed to police and solicitors," a spokesman for Southern Shipping said.

The Fair Work Ombudsman confirmed it began an investigation into the entitlements and working conditions of Southern Shipping employees earlier this year.

"Fair Work inspectors visited the Southern Shipping site in Bridport last month and spoke with a number of workers," an ombudsman spokesman said.

"Any current or former Southern Shipping employees

Southern Shipping hit by allegations

who can assist the Fair Work Ombudsman's investigation are encouraged to call the Fair Work Infoline on 13 13 94."

The Ombudsman investigates matters under the Workplace Relations Act, including wages, annual leave, superannuation, penalty rates, holiday pay, unlawful dismissal and employee treatment.

To date, the Ombudsman has made no adverse findings against Southern Shipping.

Southern Shipping has been under fire on a number of fronts, with the State Government to review its funding

agreement for the provision of a weekly service to Flinders Island.

Two reports by Marine and Safety Tasmania are also pending.

MAST chief executive Colin Finch said Southern Shipping had been recently reminded of its safe loading limits, following an accident at the Bridport facility in May.

A loader fell into the water when a mooring slipped at the wharf.

"We have clarified with Southern Shipping about what is a safe loading limit for the vessel," Mr Finch said.

The loader accident came a month after the Matthew Flinders ran aground at Grassy on King Island causing a number of cattle to drown.

The entrance to the Bridport River has also proved problematic recently, with an Australian Maritime Safety Authority spokeswoman confirming that the Matthew Flinders suffered bottom damage when it ran aground last month.

The authority spokeswoman said temporary repairs must be permanently rectified and completed by October 31.

Booth slams Sturges over shipping firm

EXAMINER 1/

By RACHEL WILLIAMS
Business reporter

SOUTHERN Shipping has denied serious accusations about its financial situation and safety matters.

Solicitor Adrian Hall, speaking on behalf of the Bridport-based business, denied allegations made yesterday by former employee John Hunt.

"It is a distorted view," Mr Hall said. "He doesn't know the true picture because he was only there for six days and wasn't in a position of knowing the true picture of the company."

Mr Hunt had said Southern Shipping, which services Flinders and King islands, was trading while insolvent.

He also made allegations about insurance and workplace safety.

The matter turned political, with Bass Greens MHA Kim Booth claiming that Infrastructure Minister Graeme Sturges was incompetent for failing to address concerns about the service.

Mr Booth said the service, which receives State Government funding, was at a standard rivalling that of a Third World country and was damaging the economies of both islands.

"My advice is that the boat has been stuck in the channel eight times in the last three months and that

cancellations and delays have already resulted in damage to perishable goods, and a loss of business and investor confidence," Mr Booth said.

Mr Sturges said the service to Flinders Island was being comprehensively reviewed.

"The State Government is undertaking an assessment, a Legislative Council select committee is being established to look at island shipping, and the Flinders Island council is undertaking an optimal shipping services analysis," Mr Sturges said.

"The State Government provides a subsidy for the provision of a minimal, basic level of service, once a week to Flinders Island, once a month to Cape Barren and all other services to the islands operate on a commercial basis. There is a current contract to provide the basic service which is being monitored to ensure the contractor complies with contractual conditions."

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03 SEP

16 OCT 2009

Flinders Island service needs permanent solution

EXAMINER 21
By Infrastructure
Minister
GRAEME
STURGES



By Opposition
treasury
spokesman
PETER
GUTWEIN



THE State Government remains committed to seeing the people of Flinders Island treated like everybody else in Tasmania in terms of having access to regular, reliable quality transport.

We have no intention of letting the people of Flinders Island down.

We have provided \$245,488 in the last financial year to Southern Shipping to ensure a weekly service to Flinders Island and four weekly to Cape Barron Island.

This contract caps the rates for this contracted weekly service but also for any other sailings that are arranged on a commercial basis.

It is important to note that Southern Shipping has provided many extra sailings outside of the contracted weekly sailing.

But we do have concerns that there is continual pushing of the provisions of the service contract to the absolute limits.

Flinders Island deserves a service provider it can have confidence in, not one that merely meets its contractual obligations.

But it would also be highly improper for the Government to breach this contract.

To better understand the concerns being raised by customers, we implemented a service monitoring system in November 2008, but no formal

written complaints have been received.

Both the Department of Infrastructure, Energy and Resources and the Flinders Island Council have also commissioned an assessment to determine the optimal arrangements for shipping to the Furneaux Islands.

Key stakeholders including the local council, the Cape Barron Island Aboriginal Association, the Tasmanian Farmers and Graziers Association and other major customers are part of this process.

When this is completed it will form the basis for determining the ongoing shipping needs.

It will take into account the other shipping operators that service the Furneaux Islands and the role the Government has in supporting a service.

The contract that the Government has put in place ensures Flinders Island has a safety net of a minimum weekly service with capped prices.

When the current industrial dispute is resolved we intend to see this service resumed quickly and at a standard that will restore confidence to its customers; and we will continue to work with the council for the longer term.

IF ANY other regional community in Tasmania such as Scottsdale, Smithton or Huonville, lost their major freight transport link you could bet that the State Government would be doing everything short of calling in the army to fix the problem.

However, Flinders Island is all but isolated at the moment and Infrastructure Minister Graeme Sturges has been completely unable to get a handle on the situation or find a solution to this debacle.

Mr Sturges said this week that he wanted to see Flinders Island with access to regular, reliable and quality transport.

He's got to do more than want to see that. His job was to prevent the issues we have seen in the past week from happening. He has monumentally failed that test.

He has even admitted that he has not even bothered to speak with the owner of the shipping service or the captain of the Matthew Flinders, who are at the centre of the dispute over wages.

This should have been the first action taken by this minister. What we need to do in the circumstances is clear: we need to examine the contracts for start. We need to ascertain if they are being adhered to. The minister has belatedly accepted that this needs to happen, but it is unclear if he has done it, or when he will do it.

He admitted yesterday that he had belatedly decided to inspect the shipping company's books, which should have been one of his first actions.

In offering a way forward once this matter is ended, a Hodgman Liberal government would engage with the Flinders Council, the shipping industry and the community of Flinders Island to make certain that in the future those who rely on the service had opportunity for input into how the service was provided and by whom.

The Flinders Island fiasco has affected reliability of services and that is bad news for an island economy that relies on being able to supply its markets consistently.

The Flinders Island abattoir is one of many businesses that have been hit hard.

A Hodgman Liberal government would also ensure that clear lines of communication were maintained with the Bass Strait island communities.

The Tasmanian Liberals have been consistently visiting Bass Strait communities to talk about the issues that affect them: power, shipping, health and education among them.

In fact, both Sue Napier and I will be on Flinders Island this weekend. I wonder if we will see Mr Sturges?

The islands should not be ignored

EXAMINER 20
The EXAMINER
EDITORIAL OPINION

THE shipping stand-off on Flinders Island is a disaster for this small community, with businesses on the brink of closure and residents being held to ransom by their isolation.

This stand-off should not be allowed to fester. It must be resolved by State Government intervention because the residents pay their taxes like every other Tasmanian.

For too long, the larger Bass Strait islands have been under the radar of our politicians because there's not enough votes.

Transport is a major problem dogging both Flinders and King islands in terms of access.

It costs a small fortune to freight a vehicle or other goods across to the islands. Interstate travel is cheaper than a flight to the islands, and it's not all the fault of the small airlines.

Yes, it boils down to economies of scale, but also, how our state and federal parliaments regard these isolated communities.

For a start our polities, both federal and state, ought to make more frequent visits to the islands.

Out of sight, out of mind. Both King and Flinders residents are at their wits' end on transport woes but they can't get anyone in authority to listen.

In the 1980s the State Government had an airline subsidy in place for the islands but this was dropped years ago.

Federal and state politicians get free travel to the islands. Federal senators even get a \$14,000-a-year charter allowance, which they could surely use for visits to represent island residents.

Bass Labor MHR Jodie Campbell is off to Flinders Island today. She should do more than use the visit to be seen doing something.

She could get feedback from locals and produce a transport survival plan, instead of just comforting words.

It would be interesting to know how many politicians have visited the two islands in the past two years and on how many occasions.

We soak the blood out of these places with iconic brands such as King Island beef, Flinders Island lamb and their magnificent dairy products, but, we give nothing back. They have to do it all themselves.

It's time we lent a hand and treated them as Tasmanians.

— BARRY PRISMAL, deputy editor

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14 OCT 2009

APPENDIX B

Deed of Agreement Between the Transport Commission, Southern Shipping Co Pty Ltd and Mr Geoffrey Gabriel.

Deed of Agreement

Contents

1	Definitions and Interpretation	3
1.1	Definitions	3
1.2	Interpretation	4
2	Expiration of Original Agreement	5
2.1	Expiration	5
2.2	Reservation of Rights	5
2.3	Acknowledgement	5
3	Term	6
3.1	Commencement of Term	6
3.2	Early commencement	6
4	Payment for the Shipping Service	6
4.1	Service Fee	6
4.2	Payment	6
4.3	Adjustment of payments	6
5	Review of Service Fee	6
6	Additional Obligations of SSC and acknowledgements	7
6.1	Obligations	7
6.2	Dredging Brid River	8
7	Freight Rates	8
7.1	Initial Freight Rates	8
7.2	Categories of Freight	8
7.3	Increases in Freight Rates	8
7.4	Fuel Surcharge	8
8	Covenant by the Commission	9
9	Obligations of SSC	9
10	Renewal of Agreement	9
10.1	Contract Review	9
10.2	Matters to be taken into account	9
10.3	Cost of the Review	10
10.4	Assistance	10
10.5	Further Agreement	10
10.6	Acknowledgement	10
11	Guarantee and Indemnity by the Guarantor	10



Deed of Agreement

Dated 18 July 2007

Transport Commission ("Commission")

and

Southern Shipping Company Pty Ltd ("SSC")

and

Geoffrey Gabriel ("Guarantor")

The Crown Solicitor of Tasmania
 GPO Box 825
 Hobart 7001
 Phone: (03) 6233 3409
 Fax: (03) 6233 2874
 Email: crown.solicitor@justice.tas.gov.au

11.1	Guarantee and Indemnity	10
11.2	Further Indemnity	10
11.3	Survival	11
12	Release of Commission from liability to SSC	11
13	Indemnities of SCC and the Trustee	11
13.1	Indemnity	11
13.2	Survival	11
14	Insurances	11
14.1	SSC to insure	11
14.2	Commission to be noted on policy	12
14.3	Insurer to notify Commission of intention to cancel policy	12
14.4	Agreement by SSC	12
14.5	Evidence of insurance	12
14.6	SSC not to prejudice insurance	13
14.7	Insurance does not limit SSC's liabilities under Agreement	13
14.8	Notification	13
15	Force Majeure	13
15.1	Definition	13
15.2	Force Majeure	13
16	Negation of Employment and Agency	14
16.1	No representation by SSC, Trustee, subcontractors etc.	14
16.2	SSC remains independent contractor	14
16.3	No master and servant relationship	14
16.4	No partnership, agency or joint venture	14
17	Default – Opportunity to rectify and termination	14
17.1	Notice to rectify breach or default	14
17.2	Further notice to rectify, suspend or terminate	15
17.3	Commission may terminate for insolvency	15
17.4	Termination notice in lieu of extension notice	15
17.5	Termination notice in lieu of suspension notice	15
17.6	Effect of Termination	16
17.7	No limitation	16
18	Sub-contracting and Assignment etc.	16
18.1	SSC not to assign etc. without approval of Commission	16
18.2	Change in Shareholding of SSC	16
19	SSC responsible for performance of the Shipping Service	16
20	Waiver	17
21	Applicable Law	17
22	Variation and other arrangements	17

22.1	Variations	17
22.2	Other contracts and arrangements	17
23	Resolution of Disputes	17
23.1	Mediation	17
23.2	Arbitration	17
23.3	Party not to commence legal action	17
24	Notices	18
24.1	How to give notice	18
24.2	How to serve a notice	18
24.3	Sufficiency of notice etc.	19
25	Severance	19
25.1	Reading down	19
25.2	Severance	19
26	Goods and Services Tax	19
26.1	Liability for GST	19
26.2	Tax Invoice	19
26.3	Terms defined in GST Act	20
27	Obligations of the Trustee	20
28	Possession of the Vessels by the Commission	21
28.1	Entitlement to take possession	21
28.2	Possession	21
29	Acknowledgement of SSC	21
30	Confidentiality	21
30.1	Parties may disclose contract provisions	21
30.2	SSC or the Guarantor must not disclose Confidential Material	21
30.3	SSC's or Guarantor's employees to comply	22
30.4	Privacy obligations preserved	22
31	Counterparts	22
Schedule 1	24	24

Details

Parties	
Commission, SSC and Guarantor	
Commission Name	Transport Commission ("Commission")
Address	10 Murray Street, Hobart, Tasmania
Telephone	(03) 1300 135 513
Fax	(03) 6233 3937
Attention	Mr David Peters Commissioner for Transport

SSC Name	Southern Shipping Company Pty. Ltd. ("SSC")
Incorporated in	Tasmania
Registration Number	ACN 108 421 218
Address	81 Elizabeth Street, Launceston, Tasmania
Telephone	(03)
Fax	(03)
Attention	

Guarantor Name	Geoffrey Gabriel ("Guarantor")
Address	81 Elizabeth Street, Launceston, Tasmania
Telephone	
Fax	

Recitals	A SSC is the owner of the Vessels and wishes to provide a shipping service to Flinders Island and the Furneaux Group.
-----------------	--

B SSC and the Commission wish to enter into this Agreement for the purposes of recording the commercial agreement reached in relation to the payment by the Commission to SSC and the engagement of SSC as the operator of the Shipping Service.

C The Guarantor has agreed to enter into this Agreement for the purpose of guaranteeing the obligations and performance of SSC and the Trustee under this Agreement.

D SSC enters into this Agreement in its capacity as trustee of the Sea Freight Trust the owner of the Vessels and also as the owner of the business which operates the Shipping Service in its own right and not as trustee of the Sea Freight Trust.

Date of agreement

See Signing page

General terms

1 Definitions and Interpretation

1.1 Definitions

In this Agreement (including the Recitals) unless the contrary intention appears:

"Agreement" means this Deed of Agreement whether in its original form or as supplemented, varied or amended from time to time.

"Auditor" means a person who is registered to act as such in accordance with the *Corporations Act 2001* (*Cwith*).

"Business Day" means any day on which banks are open for business in Hobart.

"Charter Agreement" means the Charter Agreement between SSC and the Trustee.

"Commission" means the Transport Commission established under the *Transport Act 1981* and shall where the context admits, include servants, authorised sub-contractors and agents of the Commission.

"Contract Review" means the review to be carried out in accordance with clause 10.

"CPI" means the Consumer Price Index referred to in clause 5.

"Effective Date" means 1st July 2006 or if clause 3.2 applies the earlier date referred to in that clause.

"Financial Year" means the period 1st July to the 30th June in each year of the Term.

"Financier" means any lender which holds a registered ship's mortgage over the Vessels.

"freight" includes, without limiting the general meaning of the word, livestock, fuel, fertilizer, produce including wool, manufactured goods and vehicles of all kinds including farm vehicles, machinery, passenger vehicles, motor cycles and bicycles.

"Freight Rates" means the rates set out in the Schedule 1.

"Furneaux Group" means that group of islands known as the Furneaux Group including Flinders, Clarke, and Cape Barren Islands.

"Guarantor" means Geoffrey Gabriel.

"Insurances" means the insurances policies required to be taken out pursuant to clause 14.

"Original Agreement" means the Deed of Agreement dated 6th December 2002 which was subsequently extended to the 18 July 2007 and was assigned to SSC.

"Parties" means the named parties to this Agreement or their respective lawful successors and permitted assigns, and "Party" means any one of them or their respective lawful successors and permitted assigns.

"Sea Freight Trust" means the trust established by the Trust Deed dated 7th July 2005 between Gerry Peter Geakus (settlor) and SSC (trustee).

"Service Fee" means the fee payable pursuant to clause 4.1

"Shipping Service" means the service of shipping freight and passengers using the Vessels between the following places and in accordance with schedules which are to be no less frequent than the following:

- (a) between Bridport, Tasmania and Lady Barron, Flinders Island, one return service each week;
- (b) between Cape Barren Island and Bridport every four weeks either direct or via any other island of the Furneaux Group;
- (c) between Clarke Island and within Tasmania either direct or via any other island of the Furneaux Group on a commercially accepted basis; and
- (d) between Lady Barron, Flinders Island and a Victorian Port on a commercially accepted basis.

or such other times as may be approved in writing by the Commission.

"SSC" means Southern Shipping Company Pty Ltd and shall where the context so admits, include employees, authorised sub-contractors and agents of SSC.

"State" means the State of Tasmania.

"Term" means the term set out in clause 3.1.

"Trustee" means SSC as trustee of the Sea Freight Trust.

"Vessels" means the purpose built, roll-on roll-off, 41 metre, stern loading vessel "Matthew Flinders II" (AMSA official no. 855378) and the vessel "Southern Condor" (AMSA official no. 857001).

1.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) a reference to a clause or schedule is a reference to a clause of or schedule to this Agreement, and a reference to this Agreement includes a recital or schedule;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a word importing the singular includes plural and vice versa, a word importing a gender includes each other gender and a reference to person includes an individual, firm, body corporate, association (whether incorporated or not), government, governmental or semi-governmental body, local authority or agency;
- (d) a reference to a person includes the person's executors, administrators, successors, substitute (including persons taking by novation), transferees and assigns;
- (e) a reference to any act, matter or thing includes the whole or any part of that act, matter or thing and a reference to a group of acts, matters or things or persons includes each act, matter or thing or person in that group;
- (f) where under or pursuant to this Agreement or anything done hereunder, the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the immediately following Business Day;
- (g) heading are inserted for convenience and do not affect the interpretation of this Agreement.

2 Expiration of Original Agreement

2.1 Expiration

The Parties agree and acknowledge that the Original Agreement will expire on the date of this Agreement.

2.2 Reservation of Rights

The Parties further agree that notwithstanding the expiration of the Original Agreement the right of a reconciliation of a proportionate payment to the date of this Agreement in accordance with the obligations to pay under the Original Agreement will survive the expiration of the Original Agreement.

2.3 Acknowledgement

The Parties acknowledge that the payment under clause 2.2 does not include any additional CPI subsidy arising under this Agreement.

3 Term

3.1 Commencement of Term

Performance of the Shipping Service is to commence on the Effective Date and must be completed on a date five (5) years from the Effective Date.

3.2 Early commencement

If the Shipping Service is to commence on a date earlier than this Agreement all dealings between the parties as from the earlier date relating to the provision of the Shipping Service will be taken to have been carried out on the terms of this Agreement.

4 Payment for the Shipping Service

4.1 Service Fee

Subject to clause 4.4 the Commission shall pay SSC a Service Fee of Two Hundred and Thirty Four Thousand Three Hundred and Ninety Six Dollars (\$234,396.00) per annum.

4.2 Payment

Subject to clause 4.3, the Service Fee shall be paid in two equal instalments, the first on 31st December and the second on 30th June in each year of the Term the first payment being due on 31st December 2006.

4.3 Adjustment of payments

The payments made under clause 4.2 are to be adjusted to take into account payments made by the Commission under the Original Agreement or any extension of the Original Agreement since the Effective Date. All payments made under the Original Agreement or any extension since the Effective Date are deemed to have been payments made under clause 4.2 and form part of the Service Fee.

5 Review of Service Fee

At the expiration of a period of twelve (12) months from the Effective Date and annually thereafter for the duration of the Term the Service Fee will be increased by the same percentage as the percentage increase in the Consumer Price Index ("CPI") Hobart ("CPI") or any substitute indicator of cost of living movements as published by the Australian Bureau of Statistics or any successor organisation for the four quarters immediately prior to the Review Date for which a published CPI figure is available.

6 Additional Obligations of SSC and acknowledgements

6.1 Obligations

In addition to and without limiting in any way its general obligation under clause 3 to provide the Shipping Service, SSC will:

- (a) maintain the Vessels at all times to Australian Maritime Safety Authority (or any substituted authority) Survey standards;
- (b) provide the Shipping Service in accordance with the best accepted standards of service, safety and reliability;
- (c) observe all relevant laws, regulations, standards and codes of practice as required by any authority having jurisdiction in any way over the Vessels and the Shipping Service;
- (d) not use the Vessels:
 - (i) for any trade or business which is forbidden by any law or is otherwise illicit;
 - (ii) in any manner which may render the Vessels liable to destruction seizure or confiscation;
 - (iii) to carry any goods which are illicit, prohibited, contraband or excepted by the Insurances;
 - (iv) in any manner, for any purpose or in any place excepted from the insurances which SSC is required to take out under this Agreement;
- (e) not charge more than the freight rates provided for in clause 7;
- (f) publish in such ways as the Commission may require, the schedules approved by the Commission of sailing times of the Vessels and details of Freight Rates as applicable from time to time;
- (g) provide the Commission from time to time with such information (including financial information) relating to the provision of the Shipping Service and/or the performance of the Agreement, but not including the annual financial statements of SSC, that the Commission may request in writing within fourteen (14) Business Days of the date of request;
- (h) for the purposes of clause 6.1(g), give the Commission or its nominee access to all financial accounts, books and records relating to the Shipping Service upon reasonable written notice first being given by the Commission;
- (i) for the purposes of clause 6.1(g), maintain proper books and records showing the cost of operating the Shipping Service;

6.2 Dredging Brid River

- (a) Subject to clause 6.2(b) SSC may dredge the Brid River for the purposes of undertaking the Shipping Service.
- (b) SSC will not dredge the Brid River without the approval of the appropriate government agencies;
- (c) Once approval is given to SSC by the appropriate agencies to dredge, then SSC will be responsible for the cost of the dredging of the Brid River for the purpose of carrying out the Shipping Service under this Agreement.

7 Freight Rates

7.1 Initial Freight Rates

The Freight Rates to be charged shall be those freight rates set out in Schedule 1 of this Agreement. The parties acknowledge that the Freight Rates represent a fair and reasonable commercial return for SSC having regard to:

- (a) returns that can generally be reasonably expected in the provision of shipping services of the nature required under this Agreement,
- (b) the exclusive nature of SSC's rights under this Agreement,
- (c) returns to SSC from providing any service of on-forwarding freight carried by it pursuant to the Shipping Service, and
- (d) the reasonable expectations of users of the Shipping Service.

7.2 Categories of Freight

Categories of freight in addition to those referred to in Schedule 1 may be proposed by either party for which an applicable freight rate is to be agreed or determined.

7.3 Increases in Freight Rates

The Freight Rates may be varied in accordance with the CPI, the first increase being twelve (12) months from the Effective Date and annually thereafter.

7.4 Fuel Surcharge

The parties agree that there is a fuel surcharge based on the following formula:

- Bridport – Flinders Island

A fuel surcharge of 5% shall be imposed on freight prices when fuel reaches \$1.00 per litre. The fuel surcharge on freight rates will increase by 2.5% when the fuel increases at 25 cent intervals.

undertaken by SSC or not undertaken in accordance with published schedules and the reasons for the same, any changing trends of freight requirements under the Shipping Service and the ongoing ability of SSC and the Vessels to meet those requirements, the availability of other operators capable of providing the Shipping Service and complaints if any from users as to Freight Rates and the quality of the Shipping Service.

10.3 Cost of the Review

SSC is responsible for the cost of the Contract Review.

10.4 Assistance

SSC must provide the person appointed to conduct the Contract Review with all financial information and other information associated with the provision of the Shipping Service.

10.5 Further Agreement

If as a result of the Contract Review, the Commission is satisfied with the performance of SSC under this Agreement and its ability to continue to so perform, the Parties will negotiate in good faith terms upon which SSC be granted a further agreement to provide an exclusive service in terms of the Agreement for a further period of five (5) years, with an option for second further period of five (5) years subject to a performance review in terms of clauses 10.1 and 10.2.

10.6 Acknowledgement

SSC acknowledges that the negotiation of a further agreement under clause 10.5 includes the negotiation of a new service fee.

11 Guarantee and Indemnity by the Guarantor

11.1 Guarantee and Indemnity

The Guarantor unconditionally guarantees and indemnifies the Commission in respect of SSC's and the Trustee's performance obligations under this Agreement. This guarantee and indemnity will remain in force until the Commission provides the Guarantor with written notice that the guarantee is no longer required.

11.2 Further Indemnity

The Guarantor indemnifies and keeps indemnified at all times the Commission from and against all claims, damages, loss and liability whatsoever which the Commission may suffer or incur as a result of any act of non-observance of any of the covenants, terms and conditions of this Agreement on the part of SSC and the Trustee to be performed and observed. The Guarantor will remain liable to the Commission under this indemnity notwithstanding that:

- Flinders Island – Port Welshpool

A fuel surcharge of 10% shall be imposed on freight prices when fuel reaches \$1.00 per litre. The fuel surcharge on freight rates will increase by 5% when the fuel increases at 25 cent intervals.

For the purposes of this clause 7.4 the reference to the price of fuel is the gross price of fuel before the Commonwealth rebate has been applied.

8 Covenant by the Commission

The Commission agrees that, in consideration of the commitments and undertakings of SSC during the Term it will not provide financial assistance to another company or operator for the provision of the Shipping Service without the prior written consent of SSC which consent is not to be unreasonably withheld.

9 Obligations of SSC

SSC agrees as follows:

- to notify promptly the Commission in the event SSC is served with a notice of default under the terms of any ship's mortgage relating to the Vessels, such default being sufficient to entitle the Financier to take possession of the Vessels in the event the default is not remedied;
- to notify promptly the Commission if SSC is unable or prevented from operating the Shipping Service in any way; and
- not without the prior written consent of the Commission, which shall not unreasonably be withheld to encumber the Vessels by way of mortgage, charge or other process whereby a third party becomes possessed of the right to take possession of the Vessels upon the happening of a defined event.

10 Renewal of Agreement

10.1 Contract Review

At a time no earlier than nine (9) months and no later than three (3) months before the end of the Term, the Parties shall confer in good faith and appoint an independent suitably qualified and experienced person to conduct a review ("the Contract Review") of the manner in which the Shipping Service has been provided by SSC under this Agreement. If the Parties cannot agree on a person to conduct the Contract Review the matter must be dealt with in accordance with clause 23.

10.2 Matters to be taken into account

In the Contract Review regard shall be had, in the provision of the Shipping Service, to the number of scheduled services either not

- (a) as a consequence of such breach or non-observance, the Commission has exercised any of its rights on default under this Agreement,
- (b) SSC may be wound up, dissolved or insolvent,
- (c) that the guarantee given in clause 11.1 may for any reason whatsoever be unenforceable either in whole or in part.

11.3 Survival

The indemnity given under clause 11.2 will survive the termination or expiration of this Agreement.

12 Release of Commission from liability to SSC

In the absence of negligence on the Commission's part occasioning the damage complained of, SSC and the Trustee absolves the Commission from any liability to SSC and the Trustee for damage to any of SSC's or the Trustee's property howsoever arising from the carrying out of the terms and conditions of this Agreement.

13 Indemnities of SSC and the Trustee

13.1 Indemnity

SSC and the Trustee will keep the Commission indemnified against any legal liability, loss, claim or proceedings for personal injury to or death of any person or for damage to property howsoever arising from the carrying out of the terms and conditions of this Agreement, to the extent that such injury, death or damage is attributable to any act or omission, negligent or otherwise, of SSC or the Trustee or their employees or agents.

13.2 Survival

The indemnity in clause 13.1 will survive the termination or expiration of this Agreement.

14 Insurances

14.1 SSC to insure

Before commencing the Shipping Service, SSC will take out and keep current with an insurance company previously approved of in writing by the Commission, the following policies of insurance:

- (a) key personnel insurance for an amount sufficient to obtain substitute personnel in the event the Guarantor is no longer available;
- (b) worker's compensation insurance to cover employees of SSC against any liability imposed by statute;

- (c) public risk protection and indemnity insurance for an amount not less than ten million dollars \$10,000,000.00 for any one claim or series of claims, arising out of one single occurrence to cover against:
 - (i) liability for personal injury or death or property damage in connection with anything done or not done by the Vessels and/or SSC or arising out of SSC's obligations under this Agreement;
 - (ii) such other risks as may be required by statute, order or regulations; and
 - (iii) claims in connection with any oil, liquid, gas, or other polluting substance emanating or threatening to emanate from the Vessels.

- (d) Vessels hull and machinery insurance to cover the Vessels against loss or damage from all risks (including fire and usual marine risks).

14.2 Commission to be noted on policy

SSC will ensure that the Commission is noted on the public risk insurance described in clause 14.1(c) and that the Commission is indemnified under that policy as a principal in relation to work carried out by SSC under this Agreement.

14.3 Insurer to notify Commission of intention to cancel policy

Any policy of insurance effected pursuant to sub-paragraph 14.1(c) shall contain an undertaking by the insurer to advise the Commission in writing, of any intention to cancel the insurance before such cancellation takes place and that the policy shall continue in force for the benefit of the Commission for at least thirty Business Days after written notice of any lapse or cancellation (as the case may be) has been sent to the Commission, and an undertaking that the policy shall insure the interests of the Commission up to the limits of that policy regardless of any misdescription, breach or violation by SSC of any warranties, declaration or conditions contained in that policy.

14.4 Agreement by SSC

All insurances effected pursuant to sub-clause 14.1(c) and 14.1(d) shall contain an agreement by SSC that no reduction in limits or coverage affecting the Vessels shall be made in any such policy or any part thereof except upon written approval of the Commission.

14.5 Evidence of insurance

SSC shall supply the Commission with certified copies or other satisfactory evidence of all insurance required to be taken out herein.

- (b) the relevant obligation so far as it is affected by the force majeure, will be suspended during but no longer than the delay occasioned by the continuance of the force majeure; and
- (c) the affected party must be duly diligent to overcome the force majeure as quickly as possible but shall not have to settle any labour or other dispute creating the force majeure on terms contrary to its wishes or to contest the validity or enforceability of any law, regulation or decree by way of legal proceedings.

16 Negation of Employment and Agency

16.1 No representation by SSC, Trustee, subcontractors etc.

SSC and the Trustee shall not represent themselves, and shall ensure that their sub-contractors, employees and agents do not represent themselves, as being employees or agents of the Commission.

16.2 SSC remains independent contractor

Notwithstanding the degree of direction, control or supervision which the Commission may directly or indirectly exercise over or in respect of SSC or the Trustee or their employees, agents or sub-contractors in the discharge of duties, obligations, covenants and undertaking under this Agreement, SSC and the Trustee shall be deemed to have been and remain independent contractors and the sub-contractors, employees or agents of SSC or the Trustee are deemed to be and always to have been and remain sub-contractors, employees or agents of SSC or the Trustee.

16.3 No master and servant relationship

The Commission shall not, in any circumstances of whatsoever nature, stand in the relationship of master and servant to or with SSC or the Trustee, or their employees, agents or sub-contractors.

16.4 No partnership, agency or joint venture

Nothing contained in this Agreement shall be deemed or construed to create the relationship or partnership, or principal and agent, or of joint venturer between the Commission and SSC.

17 Default – Opportunity to rectify and termination

17.1 Notice to rectify breach or default

If a Party commits a breach or default in the observance of its obligations under this Agreement the affected Party may give the other Party notice in writing ("the breach notice") specifying the breach or default and requiring it to be rectified within the time period specified therein ("the rectification period") which shall be sufficient in the circumstances to allow for rectification.

together with a certificate of currency, prior to the commencement of the Shipping Service and annually thereafter.

14.6 SSC not to prejudice insurance

SSC shall not do, or permit to be done, or suffer anything to be done, whereby any insurance, or any party thereof, may become vitiated or rendered void or voidable, or whereby any rate or premiums of any insurance shall be liable to be increased, or whereby the Commission may be put at risk.

14.7 Insurance does not limit SSC's liabilities under Agreement

The effecting of insurances as described in sub-clause 14.1 shall not in any way limit the liabilities or obligations of SSC under other provisions of this Agreement.

14.8 Notification

SSC shall, as soon as practicable, inform the Commission in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected which could affect the ability to carry out the Shipping Service, and shall ensure that the Commission is kept fully informed of subsequent action and developments concerning the claim.

15 Force Majeure

15.1 Definition

"Force majeure" means an act, event or cause (other than an obligation to pay money) which is beyond the reasonable control of the concerned party, including an act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, epidemic, quarantine or the impossibility of obtaining materials.

15.2 Force Majeure

If a party (the "affected party") becomes unable, wholly or in part, by force majeure, to carry out an obligation placed on it under this Agreement:

- (a) the affected party must give to the other parties prompt, written notice of:
- (i) reasonable particulars of the force majeure; and
 - (ii) so far as is known, the probable extent to which the affected party will be unable to perform or be delayed in performing its obligations;

17.2 Further notice to rectify, suspend or terminate

Where the default or breach has not been remedied within the rectification period to the satisfaction of the affected Party or active steps have not been taken to remedy the default or breach which in reasonable opinion of the affected Party will ensure the default or breach is remedied within the rectification period the affected Party may at its option either:

- (a) give the Party in default or breach an extension notice under which the rectification period can be extended for the time specified therein; or
- (b) give the Party in default or breach a suspension notice under which the affected Party shall be entitled to suspend performance of all or any of its obligations under this Agreement; or
- (c) give the Party in default or breach a termination notice under which this Agreement shall terminate without prejudice to any other action or remedy which the affected Party has or might otherwise have had in respect of such default or breach or any prior defaults or breaches of this Agreement of damages as a result thereof.

17.3 Commission may terminate for insolvency

Notwithstanding clause 17.1 the Commission may immediately terminate this Agreement by written notice to SSC upon the occurrence of the following which for the purpose of this Agreement are insolvency events:

- (a) if distress or execution is levied against any of the property of SSC and is not paid out within fourteen Business Days;
- (b) if an order be made or a resolution be passed winding up SSC;
- (c) if a receiver or a receiver and manager is appointed for SSC's assets or any part thereof;
- (d) if any scheme of arrangement is submitted for approval to any Court by SSC; or
- (e) if SSC becomes insolvent or unable to pay its debts as and when they become due.

17.4 Termination notice in lieu of extension notice

If the affected Party has given the other Party an extension notice under clause 17.2(a) and thereafter considers that the extension notice is no longer appropriate for any reason whatsoever, it shall be entitled to issue a termination notice to replace the extension notice which termination notice shall operate as provided for in clause 17.2(c).

17.5 Termination notice in lieu of suspension notice

If the affected Party has given the other party a suspension notice under clause 17.2(b) and thereafter considers that the suspension notice is no

longer appropriate for any reason whatsoever, it shall be entitled to issue a termination notice to replace the suspension notice which termination notice shall operate as provided for in clause 17.2(c).

17.6 Effect of Termination

If notice is given to the other party to terminate this Agreement, the affected Party may:

- (a) recover from the other Party the amount of any loss or damage sustained as a result of the termination;
- (b) be regarded as discharged from any further obligations under this Agreement; and
- (c) pursue any additional or alternative remedies provided by law.

17.7 No limitation

Nothing in clauses 17.1 to 17.6 shall limit or fetter any right at common law or in equity in respect of any breach of this Agreement.

18 Sub-contracting and Assignment etc.**18.1 SSC not to assign etc. without approval of Commission**

If SSC or the Trustees wish to sub-contract, assign, part with or be relieved from any of its rights, powers or obligations arising under this Agreement, the written approval of the Commission shall be required (which shall not be unreasonably refused) and the conditions which shall apply to any approval shall be at the reasonable discretion of the Commission but shall include in the case of SSC, as a minimum, the satisfaction of sub-clause 18.2.

18.2 Change in Shareholding of SSC

The controlling shareholder of SSC shall not dispose of its controlling interest without the consent of the Commission, which consent shall not be unreasonably withheld, provided the new controlling shareholder, or SSC in its own right, has sufficient technical and financial resources and expertise to carry out the obligations of SSC under this Agreement and is prepared to carry out those obligations.

19 SSC responsible for performance of the Shipping Service

Unless otherwise agreed to in writing by the Commission, SSC shall be fully responsible for the performance of the Shipping Service notwithstanding that SSC has sub-contracted or assigned the performance of any part of the Shipping Service.

24 Notices

24.1 How to give notice

Any notice, demand, consent in writing or other communication to be given or made under or pursuant to this Agreement shall be deemed to have been duly given or made when:

- (a) hand delivered in writing;
- (b) sent by prepaid post; or
- (c) by facsimile transmission (to the listed facsimile number),

to the Party to which such notice or demand or consent is required or permitted to be given or made under this Agreement at the following addresses:

THE COMMISSION: Department of Infrastructure Energy and Resources

10 Murray Street

Hobart Tasmania 7000

Facsimile Number (03) 6233 3937

SSC:

81 Elizabeth Street

Launceston Tasmania 7250

Facsimile Number: (03)

GUARANTOR:

Geoffrey Gabriel

81 Elizabeth Street

Launceston Tasmania 7250

Facsimile Number: (03)

24.2 How to serve a notice

Any notice, demand, consent in writing or other communication, shall be deemed to have been duly served:

- (a) in the case of hand delivery, when delivered;
- (b) if sent by prepaid post, on the third Business Day after the date of posting; or
- (c) if sent by facsimile transmission (provided that the sending facsimile machine produces a print out of the time date and uninterrupted transmission record of the sending of the Notice), upon completion of sending if such completion is within ordinary business hours in the place where the recipient's facsimile machine is located but if not, then at 9.00am on the next following Business Day in such place.

20 Waiver

A waiver by the Commission in respect of any breach of a condition or provision of this Agreement shall not be deemed to be a waiver in respect of any other existing or subsequent breach.

21 Applicable Law

This Agreement shall be governed by the law of Tasmania and the Parties submit to the jurisdiction of the Courts of Tasmania.

22 Variation and other arrangements

22.1 Variations

The Parties may from time to time by written agreement, add to substitute, cancel or vary all, or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

22.2 Other contracts and arrangements

Without limiting the generality of clause 22.1 the Parties may from time to time enter into contracts or arrangements for giving better effect to the provisions of this Agreement.

23 Resolution of Disputes

23.1 Mediation

Any dispute or difference whatsoever arising out of or in connection with this Agreement (other than pursuant to clauses 10.1, 10.2 and 10.3) shall be submitted to mediation in accordance with and subject to, the Institute of Arbitrators and Mediators Australia, Rules for Mediation of Commercial Disputes.

23.2 Arbitration

If the dispute or difference is not settled within thirty days of its submission to mediation (unless such period is extended by agreement of the parties in dispute) it shall be and is hereby submitted to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators Australia, Expedited Commercial Arbitration Rules.

23.3 Party not to commence legal action

No party may commence or maintain any action by way of legal proceedings relating to a dispute or difference until it has been resolved under this clause, except to enforce this clause.

24.3 Sufficiency of notice etc.

Any notice, demand, consent in writing or other communication required to be given or made pursuant to this Agreement shall be sufficient if:

- (a) in the case of the Commission, it shall be under the hand of the Commission or its authorised agent of solicitors; and
 - (b) in the case of the SSC, or the Guarantor, under the hand of SSC, or the Guarantor or their authorised agents or solicitors.
- A printed or copied signature shall be sufficient for the purpose of sending any notice, demand, consent in writing or other communication by facsimile transmission.

25 Severance**25.1 Reading down**

If a provision of this Agreement is void or voidable by SSC, or the Guarantor or unenforceable by the Commission but would be void or voidable or unenforceable if it were read down and is capable of being read down, it shall be read down accordingly.

25.2 Severance

If, notwithstanding clause 25.1 a provision of this Agreement is still void or voidable by SSC, or the Guarantor, or unenforceable by the Commission:

- (a) if the provision would not be void or voidable or unenforceable if a word or words were omitted, that word or those words (as the case may be) are severed; and
- (b) in any other case the whole provision is severed, and the remainder of this Agreement has full force and effect.

26 Goods and Services Tax**26.1 Liability for GST**

Subject to any other provision of this agreement expressing a contrary intention, if GST is imposed on a supply made under it, then the party paying for the supply must pay the amount of the GST to the party making the supply, at the same time as, and in addition to, the amount payable for the supply.

26.2 Tax Invoice

A party making a taxable supply under this agreement must give the recipient a tax invoice for the taxable supply when that supply is made.

26.3 Terms defined in GST Act

In this clause "GST" refers to goods and services tax under *A New Tax System (Goods and Services) Act 1999* ("GST Act") and the terms used have the meanings as defined in the GST Act.

27 Obligations of the Trustee

The Trustee, as the lawful owner of the Vessels and in consideration of the support being provided by the Commission to SSC as the operator of the Shipping Service in accordance with this Agreement to enable the operation of the Shipping Service, agree as follows:

- (a) to notify immediately the commission and the Financier in the event the Trustee becomes aware that SSC has breached the terms of the Charter Agreement to the extent that it entitles the Trustee to take possession of the Vessels;
- (b) to notify immediately the Commission in the event the Trustee is served with a notice of default under the terms of any ship's mortgage relating to the Vessels, such details being sufficient to entitle the Financier to take possession of the Vessels in the event the default is not remedied;
- (c) notwithstanding a provision of the Charter Agreement to take no action during the term of this Agreement whereby SSC is prevented from operating the Shipping Service including any proposal to sell or dispose of the Vessels by sale, lease or otherwise whereby SSC is denied possession of the Vessels for the purposes of operating the Shipping Service;
- (d) in the event that notice is given to the Commission under either or both clauses 27(a) and 27(b), to allow the Commission, at its option, to remedy the breach (at the cost of SSC) and to allow the Commission sufficient time in which to so do;
- (e) in the event that notice is given to the Financier under clause 27(a) to allow the Financier at its option, to remedy the breach and to allow the Financier sufficient time in which to so do;
- (f) to ensure that the Vessels remain at survey standard and all relevant licenses to allow the Vessels to trade are maintained and the insurances kept up notwithstanding that such obligations may have been imposed on SSC under separate documentation;
- (g) not without the prior written consent of the Commission, which shall not unreasonably be withheld to encumber the Vessels by way of mortgage, charge or other process whereby a third party becomes possessed of the right to take possession of the Vessels upon the happening of a defined event;
- (h) not without the written permission of the Commission which shall not be unreasonably withheld enter into or engage in any

commercial undertaking other than the arrangements it has entered into with SSC; and

- (i) not to amend the Trust Deed without prior written consent of the Commission which consent shall not be unreasonably withheld.

28 Possession of the Vessels by the Commission

28.1 Entitlement to take possession

If there is a breach of the provisions of the Charter Agreement resulting in the Trustee taking possession of the Vessels then the Trustee hereby agrees that the Commission will be entitled on notice to the Trustee and at the Commission's discretion to take possession of the Vessels for the purposes of operating the Shipping Service (including by engaging a sub-contractor if it wishes) provided that, should the Commission fail to exercise its right herein contained within a reasonable time then the trustee will continue to be liable to conduct the Shipping Service, provided however, that if the Commission does so take possession of the Vessels then the Commission shall pay to the trustee a fair market rental for the Vessels and any dispute as to what amounts to a fair market rental will be referred for mediation or arbitration in accordance with the dispute resolution provisions of this Agreement.

28.2 Possession

If the Commission obtains possession of the Vessels pursuant to clause 28.1 the Commission retains the right to return the Vessels to the Trustee and upon such return the Trustee agrees to provide the Shipping Service for the balance of the Term in accordance with the terms and conditions of this Agreement.

29 Acknowledgement of SSC

SSC acknowledges that it enters into this Agreement in its capacity as trustee of the Sea Freight Trust, the owner of the Vessels and the owner of the business which operates the Shipping Service in its own right.

30 Confidentiality

30.1 Parties may disclose contract provisions

Despite any confidentiality or intellectual property right subsisting in this Agreement or a schedule, appendix, annexure or attachment to it, either party may publish all or any part of it without reference to the other.

30.2 SSC or the Guarantor must not disclose Confidential Material

Subject to clause 30.1, SSC or the Guarantor must not publicly disclose, or use for a purpose other than this Agreement, any information or material acquired or produced in connection with, or by performing, this

Agreement ("Confidential Material"), without the Delegate's prior written consent, except to the extent that:

- (a) the Confidential Material is available to the public generally, other than by breach of this Agreement;
- (b) a law requires SSC or the Guarantor to disclose, file, record or register something that includes Confidential Material;
- (c) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
- (d) it is necessary or advisable to disclose the Confidential Material to a taxation or fiscal authority;
- (e) the Confidential Material is disclosed confidentially to professional advisers:
- (i) to get professional advice about this Agreement; or
- (ii) to enforce this Agreement; or
- (f) the parties agree otherwise in writing.

30.3 SSC's or Guarantor's employees to comply

The SSC and Guarantor must ensure that their employees who have access to Confidential Material, are aware of, and comply with, all confidentiality obligations affecting it.

30.4 Privacy obligations preserved

Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cw/It).

31 Counterparts

This Agreement may be signed in any number of separate counterparts, which taken together are deemed to comprise the one instrument.

Executed as a Deed.

Schedule 1

SOUTHERN SHIPPING CO GENERAL FREIGHT TABLE

To be read in conjunction with Southern Shipping Co general tariff conditions

NOTE: Weightbridge certificate or approved shipper declaration must accompany each container

Effective: 1st January 2007
Freight rates

Item	Cargo Description	Bridport to Flinders Island Inc Cape Barren Island	Bridport to Port Westpool	Flinders Island to Port Westpool	
A	Cargo Not Otherwise Specified (NOS) Base Rates Unitised within 6.1m*2.5m*2.89m(*w*h) to 24t gross Wheeled units to 12.5m*2.5m*4.27m (4*w*h) to 3t gross Includes buses, rigid vans, tractors & machinery, boats, caravans, racing cars (on trailers) and laden vehicles Prime mover/trailer combinations to 17 m*5.2m*4.27m(*w*h) to 41.5t gross rates per wheeled units General freight (per M3) Wheeled Cargo (per M2) Overdimensional Charges A surcharge will apply to overlength, overwidth overheight and or overweight cargo A quotation can be obtained on application		\$101.65 \$63.95	\$126.85 \$94.50	\$120.60 \$82.20

SOUTHERN SHIPPING CO GENERAL FREIGHT TABLE

To be read in conjunction with Southern Shipping Co general tariff conditions

NOTE: Weightbridge certificate or approved shipper declaration must accompany each container

Effective: 1st January 2007
Freight rates

Item	Cargo Description	Bridport to Flinders Island Inc Cape Barren Island	Bridport to Port Westpool	Flinders Island to Port Westpool	
B	Livestock Bulls & Bullocks Cows & Heifers Calves (3 months & under) Horses (plus \$30 box hire) Pigs (Pneumonia & Porkers) Shears Vealers (up to 10 months) Yearlings (to 15 months) Sheep (less than 50m wool) Sheep (over 50m wool) Rams Stud Bulls (plus \$30 box hire) Lambs (less than 50m wool) Lambs (over 50m wool) Foaly	\$82.40 \$57.20 \$25.30 \$12.10 \$8.85 \$63.75 \$48.35 \$5.50 \$6.60 \$12.10 \$92.50 \$6.60 \$7.65	\$111.00 \$84.60 \$34.05 \$124.20 \$14.30 \$92.35 \$60.50 \$12.10 \$13.75 \$14.30 \$128.60 \$12.10 \$13.20	\$111.00 \$84.60 \$34.05 \$124.20 \$14.30 \$92.35 \$60.50 \$12.10 \$13.75 \$14.30 \$128.60 \$12.10 \$13.20	\$111.00 \$84.60 \$34.05 \$124.20 \$14.30 \$92.35 \$60.50 \$12.10 \$13.75 \$14.30 \$128.60 \$12.10 \$13.20
	Large animals		0.85 2.17 3.26 2.17	0.42 0.63 0.42	
	Small animals			0.42	
	Wharfage rates - Port Westpool				
	Wharfage rates - Lady Barron				
	Wharfage rates - Willemark				
	Wharfage rates - Bridport				

Effective: 1st January 2007

Freight rates

SOUTHERN SHIPPING CO GENERAL FREIGHT TARIFF
To be read in conjunction with Southern Shipping Co general tariff conditions
NOTE: Weightbridge certificate or approved shippers declaration must accompany each container

Item	From	Inc Cape Barron Island	Bridport to Flinders Island	Bridport to Port Westpool	Flinders Island to Port Westpool
C	Motor Cycles	ca	\$61.55	\$64.85	\$64.85
	Bicycles	ca	\$17.60	\$23.10	\$23.10
	Caravans, Horse Flats, Trailers	m2	\$65.95	\$94.50	\$94.50
D	Frozen & Chilled Goods	kg	50c per kilogram	POA	POA
	Fish Bait - Frozen	kg	30c per kilogram	POA	POA
	Fertilizer	ton	\$64.90	\$81.35	\$81.35
	Feed	ton	\$39.55	\$45.05	\$45.05
	Seed & Stock Feed	ton	\$68.10	\$81.35	\$81.35
	Skins & Hides	m3	\$67.00	POA	POA
	Hazardous Cargo	m3	\$128.60	\$145.10	\$145.10
	- Empty Returns	m3		\$46.20	\$46.20
	Fuel Drums - Return only - 0.32m3	ca	\$50.55		
	Gas Bottles - Return	ca	\$41.75	\$46.20	\$46.20
	Roofing Iron @ 34c per lineal meter	m	\$14.30	\$17.55	\$17.55
	Cladding	m2	\$101.10		
	Trunk Tyres	ca	\$15.40	POA	POA
	Tractor Tyres	ca	\$55.00	POA	POA
	Cement/Bricks	ton	\$100.00	POA	POA
	Beer Barrels Empty - 0.09m3 each	ca	\$7.75		

Effective: 1st January 2007

Freight rates

SOUTHERN SHIPPING CO GENERAL FREIGHT TARIFF
To be read in conjunction with Southern Shipping Co general tariff conditions
NOTE: Weightbridge certificate or approved shippers declaration must accompany each container

Item	From	Inc Cape Barron Island	Bridport to Flinders Island	Bridport to Port Westpool	Flinders Island to Port Westpool
E	Vehicles	ca	Excluding wharfage	Including wharfage	RETURN
	Up to 4.20m	ca	\$274.80	\$367.80	\$447.85
	4.21m up to and including 4.50m	ca	\$399.00	\$492.00	\$563.90
	4.51m up to and including 4.80m	ca	\$486.95	\$579.90	\$646.10
	4.81m up to and including 5.9m	ca	\$601.50	\$694.50	\$805.20
	The above price includes the driver POC and the vehicle to and from Flinders Island				
	All passengers & vehicles have up to 1 month before their return passage is no longer valid				
	There is limited space for car parking near the Bridport terminal & NO PARKING inside the terminal				
F	Passengers One Way only	ca		\$50.95	\$84.60
	Adults	ca		FOC	\$53.45
	Infants (under 3 years old)	ca			
	Children (over 3 years up to 15 years)	ca			
	Passengers Return	ca		\$89.40	\$135.20
	Adults	ca			
	Infants (under 3 years old)	ca			
	Children (over 3 years up to 15 years)	ca		\$50.95	\$76.60
	The "Maiden Flinders" can carry up to 12 Passengers				
	IMPORTANT - Passengers booking must be paid for 14 days prior to sailing				

SEE SEPARATE LIST

SEE SEPARATE LIST

Effective: 1st January 2007

Freight rates

SOUTHERN SHIPPING CO GENERAL FREIGHT TARIFF
To be read in conjunction with Southern Shipping Co general tariff conditions
NOTE: Weightbridge certificate or approved shippers declaration must accompany each container

Item	From	Inc Cape Barron Island	Bridport to Flinders Island	Bridport to Port Westpool	Flinders Island to Port Westpool
D	Carp Floor & Fish Trays	ca	\$13.95		\$23.50
	Fish Bait Boxes (Polystyrene)	ca	\$6.95 per pack of 6		
	Plastic - Treated	ca	\$2.15		\$2.70
	25mm super top @ 1.5m	ca	\$2.50		\$3.05
	25mm x 100mm x up to 2.4m	ca	\$3.10		\$3.70
	75-100mm x up to 3.0m	ca	\$3.10		\$3.70
	100-125mm x up to 3.0m	ca	\$4.45		\$5.45
	125mm x 4.0m	ca	\$5.65		\$6.85
	150-200mm x up to 2.1m	ca	\$5.10		\$6.20
	150-200mm x 2.4 up to 3.0m	ca	\$6.05		\$7.35
	150mm x up to 3.6m	ca	\$8.35		\$10.20
	175-200mm x 6m	ca	\$9.30		\$11.40
	200-250mm x up to 2.1m	ca	\$6.25		\$7.60
	200-250mm x up to 2.4m	ca	\$6.25		\$7.60
	200-250mm x up to 3.0m	ca	\$8.35		\$10.20
	Super top - 150mm x 3.6m	ca	\$9.30		\$11.40
	200mm x 6m	ca	\$10.45		\$12.80
	Telegraph Poles	ca	\$3.45		\$4.20
	1.8m	ca	\$4.05		\$4.95
	2.1m	ca	\$4.65		\$5.65
	2.4m	ca	\$5.10		\$6.20
	Tanks	ca		STAND-BY RATES	
	Poly Pipe - 0.17m3	ca	\$16.50		\$19.80
	3/4" Gal - 0.30m3	ca	\$18.70		\$22.85
	1" Coil - 0.42m3	ca	\$29.65		\$36.20
	1 1/4" Coil - 0.69m3	ca	\$60.25		\$74.45
	2" Coil - 1.36m3	ca	\$71.45		\$88.45
	2" Coil - (200m roll)	ca	\$76.95		\$94.95
	2" Coil - (150m roll)	ca	\$86.45		\$106.45
	3 1/2" Coil (100m roll)	ca	\$103.00		\$127.00

Effective: 1st January 2007

Freight rates

SOUTHERN SHIPPING CO GENERAL FREIGHT TARIFF
To be read in conjunction with Southern Shipping Co general tariff conditions
NOTE: Weightbridge certificate or approved shippers declaration must accompany each container

Item	From	Inc Cape Barron Island	Bridport to Flinders Island	Bridport to Port Westpool	Flinders Island to Port Westpool
E	Vehicles	ca	Excluding wharfage	Including wharfage	RETURN
	Up to 4.20m	ca	\$274.80	\$367.80	\$447.85
	4.21m up to and including 4.50m	ca	\$399.00	\$492.00	\$563.90
	4.51m up to and including 4.80m	ca	\$486.95	\$579.90	\$646.10
	4.81m up to and including 5.9m	ca	\$601.50	\$694.50	\$805.20
	The above price includes the driver POC and the vehicle to and from Flinders Island				
	All passengers & vehicles have up to 1 month before their return passage is no longer valid				
	There is limited space for car parking near the Bridport terminal & NO PARKING inside the terminal				
F	Passengers One Way only	ca		\$50.95	\$84.60
	Adults	ca		FOC	\$53.45
	Infants (under 3 years old)	ca			
	Children (over 3 years up to 15 years)	ca			
	Passengers Return	ca		\$89.40	\$135.20
	Adults	ca			
	Infants (under 3 years old)	ca			
	Children (over 3 years up to 15 years)	ca		\$50.95	\$76.60
	The "Maiden Flinders" can carry up to 12 Passengers				
	IMPORTANT - Passengers booking must be paid for 14 days prior to sailing				

SEE SEPARATE LIST

SEE SEPARATE LIST

VICTORIA TO TASMANIA (including Flinders Island)				
Size	One/Way	Cost	Flinders Is Wharfage	Washpool Wharfage
	Return			
under 4.2m	One way	345.20		29.89 Cubic metre times \$4.00
	Return	432.15		59.78 Cubic metre times \$4.00
4.21-4.5m	One way	481.70		29.89 Cubic metre times \$4.00
	Return	568.65		59.78 Cubic metre times \$4.00
4.51-4.8m	One way	575.75		29.89 Cubic metre times \$4.00
	Return	662.70		59.78 Cubic metre times \$4.00
4.81-5.9m	One way	708.80		44.86 Cubic metre times \$4.00
	Return	795.75		89.72 Cubic metre times \$4.00
Campervan	One way	\$82.15 m2	3.73 sq metre	Cubic metre times \$4.00
	Return	Doubled	7.46 sq metre	Cubic metre times \$4.00
Motor home	One way	\$82.15 m2	3.73 sq metre	Cubic metre times \$4.00
	Return	Doubled	7.46 sq metre	Cubic metre times \$4.00
Caravan	One way	\$82.15 m2	3.73 sq metre	Cubic metre times \$4.00
	Return	Doubled	7.46 sq metre	Cubic metre times \$4.00

If a driver is accompanying a vehicle, reduce the freight price by \$150 (one way) \$300 (return)

Item	Cargo Description	Freight to Flinders Island	Freight to Port Washpool	Freight to Flinders Island to Port Washpool
G	6.1M Dry-Containers & Trailers Dry containers up to 6.1m (2.2m x 2.8m) (1*1*1) Includes empty tanks, conventional containers and leads	\$1,397.70		\$1,724.35
	Base Rates Gross Weight up to 240 tonnes			
	12.2m Dry-Containers Dry containers up to 12.2m (2.2m x 2.8m) (1*1*1) Includes cargo racks, leads, enclosed containers and leads	\$2,668.39		\$3,068.50
	Base Rates Gross Weight up to 240 tonnes			
	12.2m Trailers - 12.2m (2.5m x 2.8m) (1*1*1) Includes livestock trailers, Gross weight not exceed road transport equipment	\$2,541.20		\$2,935.10
H	Empty Returns Containers 6.10 Trailers 6.10 Trailer 12.2m x 2.4m x 1.5m	\$598.20 \$598.20 \$598.20		\$600.30 \$600.30 \$600.30

SOUTHERN SHIPPING CO GENERAL FREIGHT TARIFF
To be read in conjunction with Southern Shipping Co general tariff conditions
NOTE: Weight/height certificate or approved shipper declaration must accompany each container

Effective: 1st January 2007
Freight rates

Southern Shipping Tariff Conditions

COVERING NORTHERND AND SOUTHERND TARIFFS - EFFECTIVE FROM 1/5/2004

- Cargo must be properly secured when presented for shipment
- Weight/height stickers or approved Shipper Declaration are required for all containers submitted for shipment
- No units will be accepted if the gross weight within exceed the limits of the SSC plating
- Maximum gross weight of a single lift must not exceed 24 tonnes (when such a unit has a current test certificate)
- 50% of the cargo must be below the unit gate or gate extension height
- Shippers must reserve the right to request production of and view current test certificate for any cargo carrying units presented for shipment. All units carrying livestock must have a current AVMSA certificate.
- If cargo dimensions or the gross weight exceeds those road limits applicable in the originating State for transport without special permits or exceed a special condition is required.
- To qualify for empty positioning rates, the unit in question must either:
 - Be immediately prior to or
 - Immediately after
 - Loaded more with Southern Shipping. Shippers are required to officially declare the unit as a bonafide empty
 Failure to do so will result in full freight being charged.
- Container dealer deposits: provisions must be made by the client to return Southern Shipping's equipment to depots unless directed otherwise by Southern Shipping
- Damage will be charged if the unit is not returned to the designated terminal three working days after the arrival of the vessel.
- Freight account quarter: Claims for freight adjustments must be lodged by shippers within 7 days of shipment, otherwise Southern Shipping may not consider such claims.
- Free time is three working days (Weekends and Public Holidays except) after notification that goods are available for delivery.
- Due to some shippers not complying with current practice of removing All units from wharves within three working days after being notified that the unit is available for collection, terminal operators reserve the right to charge storage to those shippers at the following rates:
 - Perth and Flinders days or part thereof: \$20.00 per day
 - Flinders days or part thereof: \$30.00 per day
 - Perth day thereafter: \$30.00 per day
 - Flinders day thereafter: \$30.00 per day
 Changes as per Marine Board of Flinders regulations
- Lady Barron
Changes as per Port of Melbourne regulations
- In addition to storage charges, rectangular containers that require power will be charged \$30.00 per day or part thereof.
- When standard sealers are used for containers that require power for collection after two working days.
- Following port closure, all units are available for collection after two working days.
- In addition to the above general conditions, cargo shipment is also subject to the terms and conditions on the reverse of the Southern Shipping Contingement Note.

APPENDIX C

Legal Opinion:

Rights of Financial Inspection Under a Deed of Agreement Between the Transport Commission, Southern Shipping Co Pty Ltd and Mr Geoffrey Gabriel

TEXT ONLY

16 October 2009

Dr Colin Huntly
Clerk of Committees
Legislative Council
Parliament House
HOBART

Dear Sir,

SUBJECT COMMITTEE ON ISLAND TRANSPORT SERVICES – SOUTHERN SHIPPING CO PTY LTD

I refer to and thank you for your letter of instruction dated 13th October, 2009 and the accompanying brief (*the Brief*).

You have sought particular advice in relation to a Deed of Agreement dated the 18th July, 2008 (*the Deed*) between the Transport Commission 'Commission' and Southern Shipping Company Pty Ltd 'Southern Shipping'. In general terms the Deed specifies the terms upon which the Commission agrees to pay a Service Fee to Southern Shipping for a period of five (5) years commencing on or about the 1st July, 2006. The Service Fee is paid in respect of the provision of Shipping Services by Southern Shipping.

The term '*Shipping Service*' is defined within the Deed to mean the service of shipping freight and passengers using the vessels '*Matthew Flinders III*' and '*Southern Condor*' (*the Vessels*) between Bridport and islands within the Furneaux Group in accordance with agreed shipping schedules.

Included in the Brief were a number of copy press clippings which reported in a negative fashion both the financial standing of Southern Shipping and its performance of the Shipping Services. Against that background you have asked three questions:-

1. **Under what circumstances can the Transport Commission activate its powers of financial inspection at sub-clauses 6.1(g), (h) and (i) of the 'Deed of Agreement' dated 18th July, 2007 (the 'Deed')? For example, does the Deed anticipate that such powers will only be exercised in the event of an actual, or apparent, breach of the Deed?**

Clause 6.1(g) of the Deed provides that in addition to and without limiting in any way the general obligation of Southern Shipping to provide Shipping Services;

*'Southern Shipping will **provide** the Commission from time to time with such information (including financial information) relating to the provision of the shipping service and/or the performance of the Agreement, but not including the annual financial statements of Southern Shipping, that the Commission may request in writing within fourteen (14) business days of the date of request.'* [my emphasis]

Paragraph 6.1(h) further provides that:

*'For the purposes of Clause 6.1(g)'Southern Shipping will ...'give the Commission or its nominee **access** to all financial accounts, books and records relating to the Shipping Service upon reasonable written notice first being given by the commission.'* [my emphasis]

I note that Southern Shipping is required by Clause 6.1(i) to maintain proper books and records showing the cost of operating the Shipping Service.

By reason of Clause 6.1(g) Southern Shipping must **provide** to the Commission information properly requested of it in writing within a period of fourteen (14) days of request. That information can relate to either the provision of the Shipping Service or alternatively to the performance of obligations of Southern Shipping under the Deed. The scope of what constitutes the Shipping Service is self-evident from the Deed and at its core is the shipping of freight and passengers. The **performance** aspect is however a different category or species of activity. Performance must be measured against the carrying out of obligations by Southern Shipping under the Deed. The obligations include:-

- (a) the maintenance of the Vessels (Clause 6.1(a));
- (b) the provision of Shipping Services so that they meet the best accepted standards of service, safety and reliability (Clause 6.1(b));

- (c) not without the prior written consent of the Commission to encumber the Vessels by way of mortgage (Clause 9(c));
- (d) to promptly notify the Commission if Southern Shipping is unable to or is prevented from operating the Shipping Service in any way (Clause 9(b));
- (e) the maintenance of particular insurances (see Clause 14);

In terms of the information disclosure obligations, Southern Shipping may be required to provide information which is not limited to financial information. The company may also be required to provide to the Commission access to its financial accounts, books and records insofar as they relate to the Shipping Service. As previously indicated, the Commission needs to issue notices for the purpose of enforcing the disclosure obligation, and separate time periods apply depending upon which particular disclosure is sought.

In answer to question 1, I advise that the Commission can, subject to its compliance with notice requirements, activate its powers arising under Clauses 6.1(g) and (h) whenever it deems appropriate to do so. With respect to any Notice which may be issued care should be taken with its drafting so as to ensure that the relevant provisions of the Agreement and the scope of the targeted documentary material is properly expressed.

2. Are the powers of financial inspection under the Deed, referred to in questions 1 above, limited in any way? If so, to what extent? For example are the entire financial affairs of Southern Shipping reviewable?

Having regard to my comments above there are limits to the scope of the 'provision' and 'access' provisions. The obligation to provide financial documentation specifically excludes from its ambit the annual financial statements of Southern Shipping, and the scope of discovery must relate to the Shipping Service itself or a defined obligation arising under the Deed.

In particular, and notwithstanding the prohibition against insolvent trading under s 588G of the *Corporations Act 2001 (Cth)* ('The Act') there is no express obligation upon Southern Shipping to itself volunteer to cease activity under the Deed should it become insolvent. That being the case the so-called powers of inspection cannot directly target the question of solvency of Southern Shipping. Such powers may however be properly used as an information gathering exercise in the context of seeking to determine solvency as an ultimate question of fact.

By way of example, it might be argued that the obligation upon Southern Shipping to:-

'provide the Shipping Service in accordance with the best accepted standards of service, safety and reliability (Clause 6.1(b))'

imports an obligation that Southern Shipping pay its trade creditors as and when they become payable. I mention such matter given your instructions to make general comment where deemed appropriate. Such obligation may be made the subject of a carefully drafted disclosure notice under Clause 6.

In answer to question 2, I advise that the powers of financial inspection under the Deed are limited. In particular the entire financial affairs of Southern Shipping are not reviewable, but where it is deemed appropriate by the Commission a careful drafting of a relevant Notice may, in a large part, achieve a review of the trade creditors of Southern Shipping and to a degree the general solvency of the Company.

- 3. By reference to sub-clause 17.3(e), as read within the context of the Deed as a whole, what conduct of Southern Shipping Co Pty Ltd (if any), would place a reasonable debtor or creditor on notice that the company may be trading while insolvent, or be unable to pay its debt as and when they become due?**

The Commission's entitlement of immediate termination, which is confined to defined insolvency events, (which are found at Clause 17.3) needs to be compared with the pathway to termination which commences with a breach notice and the provision of an opportunity to rectify the breach complained of (Clauses 17.1 and 17.2). A breach notice may refer to Shipping Services or to any obligation arising under the Deed. I have already noted that the obligations may include a variety of matters, and specifically included would be a failure to properly respond to a disclosure notice issued under Clause 6.1 (be it the provision of and/or access to documentation). The failure to comply with a breach notice may ultimately lead to a termination notice and the Deed provides for a specific regime in that respect (Clause 17.2).

The insolvency provisions under Clause 17 of the Deed refer to the economic status of Southern Shipping at a particular time. The Company's solvency, or lack thereof, is in the context if the Deed a separate matter from the undertaking of Shipping Services or the performance of specific obligations arising under the Deed. Put simply, there is no express obligation for Southern Shipping to perform Deed tasks only whilst solvent. However, once a defined insolvency event in fact occurs, and irrespective of the quality of Shipping Services being provided and Southern Shippings general adherence to contractual obligations, the Commission has a contractual entitlement to terminate the Deed.

Solvency is not defined within the Deed and convenient reference may be had to provisions of the Act which deal specifically with insolvent trading issues. The Act defines a person (which includes a company) which is not solvent as being insolvent. The determination of whether or not Southern Shipping is insolvent is one which must be made in the light of all the circumstances of the company. It is trite law to say that if a company is unable to pay its debts as and when they become due it is insolvent.

Olsson J in *Brooks v Heritage Hotel Adelaide Pty Ltd* (1996) 20 ACSR 61 stated at 65:

'The issue of insolvency is a question of fact, which falls to be decided as a matter of commercial reality in the light of all the circumstances or... a situation must be viewed as it would be by someone operating in a practical business environment...The question is not to be answered merely by looking at the financial statements, although these are, of course, not irrelevant.'

The focus of inquiry is primarily on the company's cash flow (*Noxequin Pty Ltd v Deputy Commissioner of Taxation* [2007] NSWSC 87) however the state of the balance sheet is still relevant (*Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* [2008] WASC 239 per Owen J at 9.21).

You have asked what conduct of Southern Shipping might put a reasonable debtor and creditor on notice that the company may be trading while insolvent.

For the purpose of answering question 3 reference is made to the case of *Australian Securities and Investments Commission v Plymin (No 1)* 2003 VSC 123 (*'Plymin'*). At 386 the following list of indicia of conduct and events which point to insolvency was given in evidence and paraphrased by Mandie J as follows:

1. *Continuing losses.*
2. *Liquidity ratios below 1.*
3. *Overdue Commonwealth and State taxes.*
4. *Poor relationship with present Bank, including inability to borrow further funds.*
5. *No access to alternative finance.*
6. *Inability to raise further equity capital.*
7. *Suppliers placing [company] on COD, or otherwise demanding special payments before resuming supply.*

8. *Creditors unpaid outside trading terms.*
9. *Issuing of post-dated cheques.*
10. *Dishonoured cheques.*
11. *Special arrangements with selected creditors.*
12. *Solicitors' letters, summons[es], judgments or warrants issued against the company.*
13. *Payments to creditors of rounded sums which are not reconcilable to specific invoices.*
14. *Inability to produce timely and accurate financial information to display the company's trading performance and financial position, and make reliable forecasts.'*

Plymin was a case that involved directors duties to prevent insolvent trading by a company therefore the foregoing indicia were relevant in determining whether or not, under s588G(1)(c) there were '*...reasonable grounds for... [the directors]... suspecting that the company was insolvent.'*

The above indicia are equally relevant to a creditor or debtor being put on notice as to the possible insolvency of Southern Shipping.

The press clippings which you have referred to me give rise to concerns as to the solvency of Southern Shipping but of themselves do not stand as proof of insolvency. The same comment may be made in relation to the Dun & Bradstreet report which, somewhat alarmingly, reports a large number of creditor claims. Indeed reference is made to a Judgment obtained in proceedings, but it does not state whether or not that Judgment has in fact been satisfied. Viewed as a whole the ancillary material to which you have referred gives rise to significant concern as to the solvency of Southern Shipping, but of itself does not prove insolvency to the requisite degree. There is a distinction to be drawn between retrospective and prospective insolvency. Invariably the task of determining retrospective insolvency is made easier as such a task often involves the review of a body of materials referring to past events. Here however we are concerned to assess or project insolvency upon limited evidence.

The Commission would be taking a risk should it seek to assert insolvency for the purposes of Clause 17.3(e) upon the basis of inadequate evidence and after termination find that its assessment was incorrect. A wrongful termination would expose the Commission to what might be a significant damages claim.

As the evidence currently stands, it needs to be supplemented by further enquiry and it is open to utilise the Clause 6.1 disclosure provisions in order to obtain hard evidence.

In conclusion and by way of *general comment* I note the following:

- my search of the Australian Register of Ships for '*Matthew Flinders III*' having official number 855378 undertaken on 14th October, 2009 indicates that the only recorded ships mortgages were registered on the 22nd and 23rd December, 2005.
- a search of the Australian Register of Ships for '*Southern Condor II*' having official number 857011 undertaken on 14th October, 2009 indicates that the only recorded ships mortgages were registered on the 22nd and 23rd December, 2005;
- my ASIC search of Southern Shipping undertaken on 14th October, 2009, indicates that there were no further registered charges beyond the fixed and floating charge registered in favour of the Commonwealth Bank of Australia and created the 17th June, 2009. I note that the terms of the Bank's charge would constitute a mortgage over the Vessels and that given the character of the Australian Register of Ships there is no compulsion or requirement to also register such charge with the Registry.

Please advise if I may clarify any matters for you.

Yours faithfully

Signature

Colin Adams
Partner

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