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Ref: Shipping Legislation Amendment Bill 2015

The Australian cruise industry welcomes the opportunity to comment on the Government's proposed reforms of the 2012 Coastal Trading Act as laid out in the Shipping Legislation Amendment Bill 2015. CLIA Australasia is the regional office of Cruise Lines International Association (CLIA), the world's largest cruise association dedicated to the promotion and growth of the cruise industry. CLIA is composed of more than 60 of the world's major cruise lines and serves as a non-governmental consultative organisation to the International Maritime Organization (IMO), an agency of the United Nations.

As a result of CLIA Australia's members' extensive activities in the region, the application of domestic Australian coastal trading regulations has potentially significant impacts on the future growth and success of the cruise industry in Australia.

1. Executive Summary

The cruise sector is the fastest growing sector of Australian tourism and has experienced double digit growth over the past 5 years. The Australasian region is also the fastest growing region of the global cruise market. Overall passenger numbers exceeded 1million in 2014 and are expected to reach 2 million by 2020. The economic contribution of the industry in 2013 was A\$3.2bn, and is expected to grow by at least a further 10% when CLIA's 2014/15 Economic Impact report is released in September. This highly impressive growth profile has no doubt been facilitated in part by the federal government's decision to exempt large cruise ships (vessels of 5000 tonnes and carrying at least 100 passengers) from the Coastal Trading Act (CTA). This has created a highly competitive operating environment for the cruise industry and allowed Australia to compete in what is a highly competitive global market place.

While the ministerial exemption for cruise ships has been re-granted for a period of 5 years (from 2012) it continues to provide a lack of certainty for cruise line operators in terms of long term deployment planning. The rather arbitrary nature of the vessel size threshold has also excluded a number of foreign-flagged expedition vessels carrying high-income passengers from operating from/to Australian destinations. In this context the cruise industry is broadly supportive of the Government's proposed reforms on the basis that they provide a clear legislative framework for the operation of



cruise ships in domestic activities and they provide a level playing field in the smaller, expedition segment of the market which is currently excluded from the ministerial exemption arrangements. With

the rapidly increasing short cruise segment and the demand this is creating for regional cruise destinations, the opportunity for further growth of the industry through domestic cruise activity and the consequential impact this will have on the regional economies in Australia is significant.

However, the industry has identified a number of issues with the proposed permit system and related legislation that may act more as a barrier to the further growth of the industry rather than an incentive to expand domestic cruise activities. These issues are dealt with in more detail in the following paragraphs but in summary the industry's concerns are:

- I. **Industry Planning Cycles** - the annual permit system does not reflect or support the commercial planning and deployment practices of the industry which typically operate on a minimum 2 year planning cycle. This will create a degree of business uncertainty and therefore risk in the industry's overall deployment and itinerary planning decisions. This has the potential to limit the growth of domestic cruise activity and the industry believes that this could be relatively easily addressed by the granting of a rolling permit that remains valid unless the permit holder breaches the conditions of the permit. Alternatively, the granting of a permit for a 2 year period would reflect the planning and brochure publishing cycles of the industry.
- II. **International Visiting Ships** - the permit requirements will negatively impact those international cruise ships that visit Australia as part of a wider international itinerary and who may carry a limited number of passengers who embark/disembark between Australian ports as an incidental activity. The embarking and disembarking of passengers between Australian ports by a visiting international cruise ship is subject to commercial considerations and may occur at relatively short notice subject to availability of berths on different sectors of the overall voyage. The requirement for an international cruise ship to apply for a permit to carry a potentially small number of passengers on a voyage between two Australian ports introduces a level of bureaucracy (including the reporting requirements associated with a permit) that is potentially out of line with the commercial benefits derived from the activity. The industry believes that a practical solution to this would be the introduction of a threshold relating to the number of passengers that embark and disembark between Australian ports on a single voyage as a % of the total passenger complement of the cruise ship, below which a permit would not be required.
- III. **Dry Docking and Importation** – while the permit system appears to address the industry's concern regarding the importation of cruise ships when entering dry docks, the industry does not believe that this approach fully addresses the issue. The importation of a vessel for dry docking in Australia generates considerable additional costs regarding compliance with various customs and immigration requirements. Exempting cruise ships from the



importation provisions of the Customs Act on the basis that, for completely independent commercial reasons, have decided to undertake inter-state domestic cruises does not address the underlying issues re the requirement for importation and does not create a

level playing field for industry participants. Those cruise lines based in Australia who decide either not to undertake domestic cruise activity or decide to restrict those activities to intra-state voyages, would not ordinarily require a license but would find themselves tempted to do so simply to gain the importation exemption. The industry strongly recommends that the Customs Act be reviewed and amended to facilitate the dry docking of all cruise ships that undertake activity in Australia rather than relying on the permit system to deliver this outcome.

There are also a number of areas of the legislation where we would seek clarification of our understanding as to how the legislation would apply. These are included in the relevant sections below.

In conclusion, the cruise industry would recommend the following changes to the proposed legislation that, while maintaining the overall integrity and intent of the legislation, would provide a more supportive regulatory environment and lead to a more positive economic outcome for Australia:

- The introduction of a rolling permit arrangement for cruise ships which are based out of Australia on a seasonal or year round basis.
- The introduction of a threshold for the carrying of passengers between Australian ports by visiting international cruise ships where those passengers are both embarking and disembarking at an Australian port below which a permit would not be required. It is recommended that the introduction of a threshold be considered which relates to the capacity of the ship and the proportion of non-transit passengers.
- A review of the Customs Act and the deemed importation provisions for cruise ships undertaking dry docking in Australia (both scheduled and emergency) rather than relying on the permit system to deliver a “non-importation” environment.

2. Industry Planning Cycles

The cruise industry operates in a global market place and deploys its capacity across global markets based on a highly competitive commercial environment. Deployment decisions are taken at least 2 years in advance of a deployment date and itineraries are published at least 18 months prior to the commencement of the deployment. Brochures typically cover a period of 18-24 months. Therefore the proposed annual permit system does not align with the commercial planning cycles of the industry and introduces a degree of uncertainty as compared to the existing Ministerial exemption. Given the granting of a permit requires a declaration regarding the 183 day domestic activity threshold and domestic activity reporting, the extension of the permit period for a further year would provide a more certain regulatory environment for the cruise industry and thereby further stimulate domestic cruise activity.



It is the industry's understanding that the requirement for a permit only applies where a cruise ship carries passengers interstate and not intra-state. Therefore, short cruises from Australian ports that do not either touch a port in a state other than the state of the port of departure are exempt from the requirement to hold a license. Based on this exemption, short domestic cruises to destinations within a state will not be included in the 183 day threshold computation. We would appreciate confirmation that this understanding accords with the intent and meaning of the legislation.

3. International Visiting Ships

Australia continues to be an attractive destination for international visiting ships particularly in the summer season where the Australasian region provides an attractive alternative to itineraries in the northern hemisphere winter. This is particularly the case with the European-based cruise lines, a number of which undertake round-world cruises at that time of year. With the growth of cruising in Asia, the Australasian region will also provide an attractive winter alternative deployment. While a significant proportion of the passengers on these visiting international ships are non-Australian, a key component of the commercial viability of these itineraries is the ability to attract Australian passengers on a range of sectors of the overall voyage. This includes the carrying of a small number of passengers between Australian ports.

However, it would appear that this somewhat incidental activity will be captured by the coastal shipping definition and therefore could require effectively ALL visiting international ships to require a permit. In addition, the visiting international ship would be subject to the reporting and other requirements under the permit legislation. The situation could well arise where the legislative requirements become a barrier to the growth of international cruise ship visits to Australia and the significant economic benefits such visits generate.

We would therefore strongly recommend that ships visiting Australia as part of a longer, international voyage, are exempt from the permit legislation. Such an exemption could be based on a maximum % of the ship's capacity but the industry would be open to considering alternative approaches to achieving the desired outcome.

4. Dry Docks and Importation

The recent change in interpretation of the Customs Act where cruise ships entering a dry dock in Australia were deemed to be imported has had a significant detrimental impact on both the maritime repair facilities in Australia and the economic benefits that accrue from dry docking activities. The dry dock facility at Brisbane has now closed leaving only one facility in Australia capable of handling large ships and major refurbishment projects. As a result, a number of scheduled dry docks have moved to Singapore despite the associated cost and time of transiting a ship from Australia to Singapore. With an average dry dock period of 14 days and an average spend of over A\$20million, this is a significant loss to Australia which appears to be the result of a simple change in interpretation rather than any premeditated legislative change.

By way of background, all cruise ships are required to undertake mandatory dry docks with the timing and duration determined by both the age and condition of the ship. On average, most of



the ships deployed in the Australasian region are required to dry dock twice within a 5 year period. In addition to these scheduled dry docks, there are occasions where mechanical issues arise which require the ship to be dry-docked for repair. These, by definition, tend to be unplanned and emergency in nature with extremely short lead times.

While the permit system appears to simplify the dry dock arrangements, it clearly does so only for those ships that have decided for commercial reasons to undertake domestic shipping activity that requires a permit. This is clearly an anomaly that does not fully address the dry dock importation issue.

We further understand that, where a ship enters a dry dock while holding a Permit, the time in dry dock will be recognised in determining whether a ship has engaged in coastal shipping for less than 183 days. This has the potential to limit the domestic cruise activity undertaken by a cruise ship in a year where it has a mandated dry dock thus reducing the impact of cruise tourism on both the national and regional economies. It may also result in an unintended breach of the 183 threshold should a ship be required to enter an emergency, unplanned dry dock in addition to the planned coastal shipping activity within a year.

On the basis of the above we would recommend that the Customs Act be amended to ensure that cruise ships entering a dry dock in Australia are not deemed to be imported. This would then remove the need for dry docking and importation to be part of the permit system and allow cruise ship operators to maximise their coastal shipping activity within the 183 day threshold. This would have a double economic benefit; additional economic activity driven by cruise ship dry docks and optimisation of the economic benefits that coastal shipping activity generates, particularly to the regional economies of Australia.

5. The Australian International Shipping Register

The industry believes that Australia has a significant opportunity to develop a role as a globally competitive registry which would increase Australia's jurisdiction over these vessels and contribute significantly to an Australian maritime cluster. With a significant proportion of the global cruise industry capacity deployed in the Australian region, a competitive international registry could be an attractive alternative to the industry's existing registration arrangements. The industry recognises that such vessels would be subject to the same OHS and environmental standards as the Australian General Register but would otherwise be recognised and treated as a foreign vessel, regulated by international standards and global maritime practices.

However, as well as the Customs/Importation issue addressed earlier in this paper, the AISR remains globally uncompetitive on the basis of the taxation regime that would currently apply to a vessel registered on the AISR. We would recommend the following:

- Corporate tax – a review of the existing tax environment as it applies to shipping and the AISR in order that Australia is competitive with other registration jurisdictions such as Singapore and the United Kingdom. The following changes are proposed to improve the competitiveness of the Australian fiscal environment



- The introduction of deemed franking credits in respect of dividends to resident shareholders
- The introduction of dividend withholding tax exemptions in respect of dividends to non-resident shareholders
- Seafarers tax – retention of the seafarers tax offset, the extension of the tax offset to all crew rankings and the availability of the tax offset to Australian seafarers employed on foreign-flagged vessels. The substantial growth in cruise ship deployments provides the potential to employ a significant number of Australians so long as the basis of employment is competitive by global standards.

6. Conclusion

The cruise industry's position as the fastest growing sector of Australia's tourism sector is strongly linked to the globally competitive environment that the Government created when granting the Ministerial exemption from the Coastal Trading Act. Domestic cruise activity has flourished, attracting more consumers to the cruise sector as well as delivering significant economic benefits to the economies of regional Australia. Subject to the changes proposed in this document, the industry believes that the proposed reforms will maintain Australia's competitive position while extending the environment to the rapidly growing expedition sector of the cruise industry.

CLIA would welcome the opportunity to discuss the contents of this submission further and to work with the Government to ensure the proposed reforms continue to drive the sustainable growth of the cruise industry.

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