MARITIME UNION OF AUSTRALIA (MUA)

SUBMISSION TO THE SENATE RED TAPE COMMITTEE

THE EFFECT OF RED TAPE ON CABOTAGE

MARITIME CABOTAGE

5 APRIL 2017

Recommendations

1. That the Committee recommend to the Government that the policy of maritime cabotage be retained in Australia as an important legal principle to underpin regulatory and fiscal support for the Australian shipping industry, a national strategic industry.

2. That the Committee recommend to the Government that it accept that maritime cabotage is the foundation for providing for fair competition in coastal shipping with the objective of maintaining a floor level of Australian ships in Australian coastal seaborne trade and supporting Australian shipping businesses.

3. That the Committee note that the Coalition Government has released a Coastal Shipping Reform Discussion Paper, which proposes administrative changes to the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) which, if translated into legislation, could potentially result in a reduction in red tape, but note that such a reduction in red tape will have the perverse effect of advantaging foreign businesses to the detriment of Australian businesses.

4. That the Committee note that the Australian Government has available to it, alternative mechanisms (alternatives to the current regulatory structure of the CT Act) to implement the principle of maritime cabotage that would reduce red tape and at the same time advantage Australian businesses rather than foreign businesses, these being:
(a) Commercialising the CT Act by (i) clarifying the Object of the CT Act and removing ambiguity; and (ii) by introduction of a contestability framework for settling the balance between Australian General Licensed ships and foreign Temporary Licensed ships in coastal trade, based on commercial principles well known in the shipping industry, supported by a commercial arbitration facility and pricing oversight by the Australian Competition and Consumer Commission (ACCC); and or
(b) Developing a new and separate 'maritime crew visa' for non-nationals employed on ships issued with a Temporary License under the CT Act that includes the same labour market testing and worker entitlement provisions that apply to a 457-work visa.

5. That the Committee recommend that in parallel with the consultation process established by the Government by releasing a Coastal Shipping Reform Discussion Paper, the Government agree that a root and branch review of the potential future role of Australian shipping in the national freight task be undertaken, and that this review task be allocated to the Task Force established by the Government to support the Inquiry into Freight and Supply Chain Productivity announced by the Minister for Infrastructure and Transport on 9 March 2017.

1. About the MUA

1.1. The Maritime Union of Australia (MUA) represents nearly 13,000 workers in the shipping, stevedoring, port services, offshore oil and gas and diving sectors of the Australian maritime industry.

1.2. Members of the MUA work in a range of occupations across all facets of the maritime sector including on coastal cargo vessels (dry bulk cargo, liquid bulk cargo, refrigerated cargo, project cargo, container cargo, general cargo) as well as passenger vessels, towage vessels, salvage vessels, dredges, ferries, cruise ships, and recreational dive tourism vessels.. MUA members work on LNG tankers engaged in international Liquefied Natural Gas (LNG) transportation. In the offshore oil and gas industry, MUA members work in a variety of occupations on vessels which support offshore oil and gas exploration, construction and operations.

1.3. In ports, MUA members work as stevedoring workers, as well as directly for port authorities across Australia, including as safety officers, pollution control and oil spill response officers, emergency response personnel, dredging crew, pilot boat crew, and in vessel traffic control. MUA members also work in port services which are often sub-contracted, for example, tug boats, lines and mooring services (although these services are also provided by some port authorities), and in container and bulk and general stevedoring.

1.4. The MUA is a member of the International Transport Workers Federation (ITF) which is the peak global union federation for over 700 unions representing over 4.5 million transport and logistics workers worldwide.

1.5 The MUA welcomes the opportunity to present a submission to the Senate's Red Tape Committee on its review into the effect of red tape on cabotage.

1.6 This submission focusses only on maritime cabotage.

2. Preamble

2.1 Cabotage is a legal term or concept. In the maritime sphere, it refers to the navigation of a vessel along the coast of a nation for the purpose of movement of goods and people from one port to another within the territorial limits of that nation.

2.2 Most maritime nations of the world regulate the navigation of vessels along their coastlines within their territorial waters with the aim or giving various levels of preferential treatment to ships registered in those nations for the purpose of facilitating maritime trade (economic security), for reasons of national security and Defence support, for marine environment protection and for promoting national employment.

2.3 Most of Australia's key Defence allies and trading partners retain some form of maritime cabotage. Nations of commercial and strategic importance to Australia which retain maritime cabotage are listed in **Attachment A**.

2.4 The reason why national fleets (ships registered in the home country) are provided with varying levels of preferential treatment is that given the broad impact of laws of the sea, particularly under the United Nations Convention on the Law of the Sea (UNCLOS) which provides freedom of passage rights, national flag ships are required to directly compete with foreign

registered ships, which, because their crews are supplied by and large by developing nations, enjoy a labour cost structure that is vastly inferior to developed nations i.e. for seafarers on national flag ships. The shipping market is perhaps the most globalised of all markets, and in order to maintain domestic fleets under national control, for strategic reasons, nations have adopted various forms of maritime cabotage.

2.5 This is often wrongly regarded by ill-informed commentators as a form of protectionism, when it is a legal and national interest concept designed to allow national enterprises to compete on fair terms with international shipowner/operator enterprises in a highly globally integrated market.

2.6 The maritime sector requires a level of preferential treatment to ensure its operations are given the same level of protection as all onshore industries, which are protected from foreign labour competition at foreign labour market standards by a raft of Government sponsored legislation, namely labour relations, immigration and taxation laws.

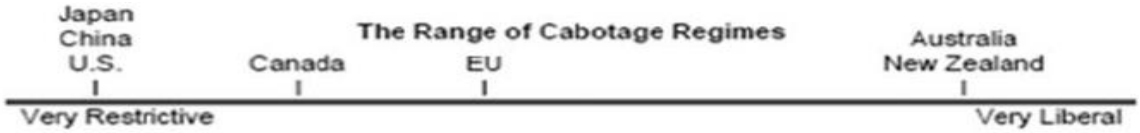
2.7 The preferential treatment afforded to the maritime sector through maritime cabotage should only be withdrawn at the time when Australia decides to adopt an open access border allowing the free movement of labour and the abolition of all employment safety net protections. In the absence of such a nonsensical and bizarre policy, it is entirely legitimate, in fact in the national interest, to maintain maritime cabotage.

2.8 The only question that should be at issue, is the level of that preferential treatment.

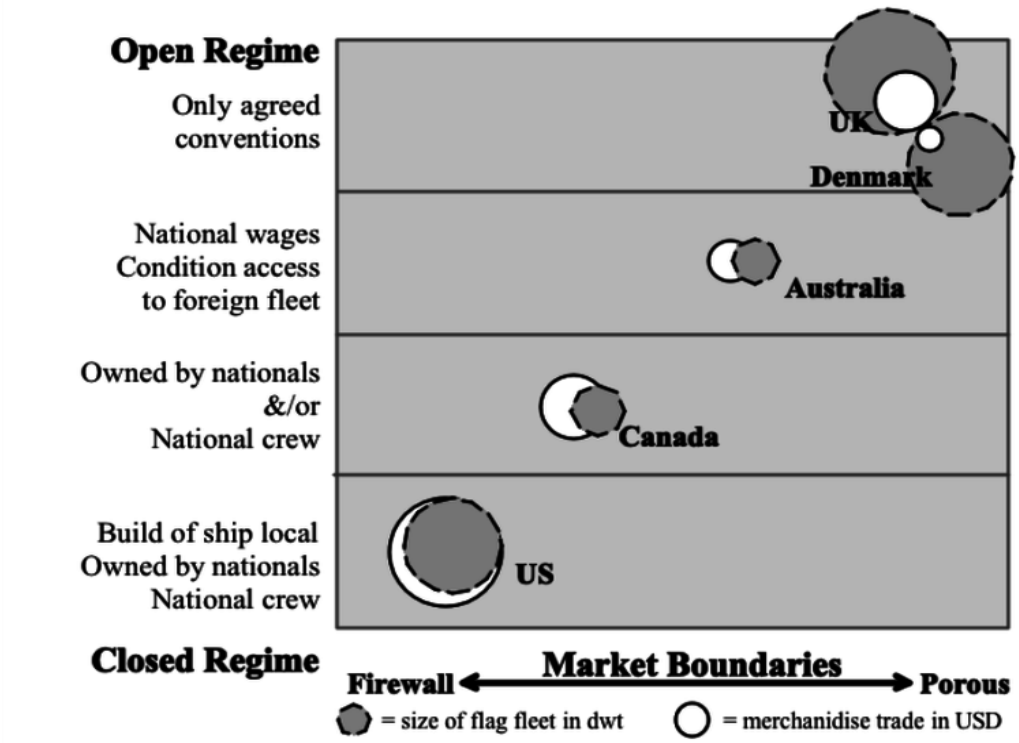
2.9 Australia has maintained a policy of maritime cabotage for over 100 years, captured in the Navigation Act throughout the 20th Century until the cabotage provisions were placed in a separate Act, the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) from 1 July 2012.

2.10 The Australian maritime cabotage regime, given effect through the CT Act is already one of the most liberal in the world. Any further erosion of maritime cabotage will put Australia completely out of step with its trading partners and Defence allies. A diagrammatic representation of where Australia sits on the spectrum of maritime cabotage is shown in Figures 1 and 2 below, based on the work of one of the world's leading experts on maritime cabotage, Mary R Brooks, Faculty of Management, Dalhousie University, Halifax, Canada, who has also been a visiting Professor at the University of Sydney's Australian Key Centre in Transport Management.

Figure 1. Range of Cabotage Regimes in Selected Countries



Source: Brooks (2009)



Source: Brooks (2013)

3. The current status of maritime cabotage in Australia

3.1 Maritime cabotage is currently codified, in theory at least, in the Object and detailed provisions in the CT Act. Regrettably, as the Federal Court has found[1], there is considerable ambiguity in the Object of the Act, which was the subject of last minute amendments to the then Government's Bill when it was being debated in the hung Parliament in June 2012.

3.2 That ambiguity, in combination with the considerable administrative flexibility able to be exercised by the Minister's Delegate who decides on the issuing of Temporary Licenses (TL) to foreign ships using foreign crews (whose entitlements are based on developing nation standards), and questionable manipulation of the voyage application process by owners, charterers, masters, ships agents and shippers, all of whom are eligible to apply for a TL, has meant that in practice, there is no preferential treatment for Australian registered ships.

3.3 That explains the continuing loss of Australian ships from the Australian coast over the period since 1 July 2012. See a summary of Australian coastal shipping losses since 2012 at **Attachment B.**

4. The Turnbull-Joyce Government approach to Australian Coastal Shipping

4.1 In 2015 the then Turnbull-Truss Coalition Government introduced a Bill into the Australian Parliament, that had it passed would have fully deregulated

[1] Full Federal Court (Allsop CJ, Mansfield J & Rares J), *CSL Australia Pty Limited v Minister for Infrastructure and Transport [2014] FCAFC 10; 221 FCR 165; 311 ALR 547; 141 ALD 1*

Australian coastal shipping i.e. abolished maritime cabotage. The Bill did not command political support and the Australian Senate defeated the Bill in late 2015.

4.2 As a consequence of the defeat of the Bill, which demonstrated the Government's inability to bring the industry together with a consensus on legislative reform that could attract wide support, the industry itself demonstrated leadership, initiated by the CEO of the Australian shipowners, Maritime Industry Australia Ltd (MIAL).

4.3 Just after the industry consultations commenced with an industry forum in January 2016, a new Transport Minister was appointed and advised his intentions to improve the 2012 shipping legislative package. He welcomed the industry led consultation process, which regrettably the Government did not actively participate in, but nevertheless advised he would take the industry's Green Paper proposals into account in considering Government improvements to current shipping legislation.

4.4 The industry consultation process resulted in development of an industry directions Green Paper, which was presented to the Government in late 2016 – copy at **Attachment C**. The MUA also lodged a complementary submission to the Government in January 2017 – copy at **Attachment D**.

4.5 In March 2017, the Minister for Transport released a Coastal Shipping Reforms Discussion Paper for comment by 28 April 2017 – copy at **Attachment E**.

4.6 The Discussion Paper proposes minimalist administrative changes to the CT Act rather than proposing reform of coastal shipping and puts forward a number of training initiatives options for comment. Comments on the Discussion Paper are due by 28 April 2017.

4.7 While the Discussion Paper does not remove the principle of cabotage, and proposes some potentially worthy administrative changes, the overall impact is that if passed into law, it will make it easier for the Minister (his Delegate) to issue licences to foreign ships and make it harder for Australian ships to contest for coastal cargoes. The administrative changes that remove administrative process, and therefore costs for applicants for Temporary Licenses proposes could be regarded as proposing removal of red tape. However, those same changes will make it harder for Australian shipowners to contest for the carriage of Australian coastal cargo, so from a different perspective, the Government's changes are placing barriers on Australian business, or adding red tape, and are therefore impacting on the capacity of Australian businesses to compete in the Australian coastal trading market.

4.8 This is the irony. Maritime cabotage, like a suite of Government policy in relation to globally trading businesses, be it direct subsidy, taxation incentives, grants, concessional loans, trade concessions, tariffs, human resource support and program support is justified on the basis of supporting Australian businesses and Australian employment in the national interest, yet the Coalition Government has turned Australian maritime cabotage on

its head by providing regulatory support to foreign businesses to the detriment of Australian businesses and Australian employment.

4.9 The CT Act retains maritime cabotage in principle only, because most other provisions in the Act and the changes proposed in the Government's Discussion Paper are designed to favour and facilitate foreign ship access to Australian seaborne coastal trade.

4.10 The Turnbull-Joyce Government has missed an historic opportunity when industry consensus and bi-partisanship was at its peak to get the balance right between supporting Australian ship owners/operators and therefore Australian employment, and refinement of the circumstances when those Australian ships could be supplemented by foreign ships in coastal trade. The Government could have acted to get the balance right by:

4.10.1 First, removing ambiguity from the Object of the CT Act, which would reduce transactional costs and would have prevented litigation which has been one of the largest costs in the system. This ambiguity has added a layer of red tape, which was easily resolvable, and would have commanded industry and bi-partisan support.

4.10.2 Second, amending the contestability provisions, to take it out of the realm of Government decision making and place it on a commercial footing. The current bureaucratic process whereby a Government official, acting as the Minister Delegate, decides whether a cargo is carried on an Australian ship or a foreign ship adds a huge layer of red tape, especially when such officials have no expertise in ship operations, ship chartering or shipping commercial relationships and where the Government officer's decision can destroy an Australian ship operation at the stoke of a pen.

4.11 This has occurred in numerous cases, the most two recent examples being the decision of the Minister's Delegate's to award a TL to Alcoa in its alumina trade between WA and Portland, resulting in the removal of the *MV Portland*, operated by Alcoa due to its entire cargo volume being awarded to a foreign registered ship; and the decision of the Minister's Delegate to award a TL to Rio Tinto/Pacific Aluminium in its alumina trade between Gladstone and Newcastle, resulting in the removal of the *CSL Melbourne*, due to its entire cargo volume being awarded to a foreign registered ship. Both decisions by the Minister's Delegate had disruptive effects on a range of Australian businesses, not just those that owned and operated the ships, but the crew supply agencies, the bunker supply businesses, the provisioning businesses, the ship repair and maintenance businesses, the legal and insurance businesses that supported the operation of those Australian ships.

4.12 The MUA submission to the Government to complement the Green Paper provided a workable and low red tape commercial alternative to the bureaucratic and high red tape contestability provision in the current CT Act, but regrettably, it appears not to have been considered – see Section 11 in Attachment D for an outline of the MUA proposal.

4.13 This submission has already demonstrated in Section two that Australian cabotage is one of the most liberal in the world, and the proposals in the Minister's Discussion Paper, if translated into legislation, will further liberalise Australian cabotage to the detriment of Australian businesses and Australian employment.

4.14 Red tape reduction, or reducing the costs of doing business, is in-principle a worthy objective of Government and should be under continuous review. However, red tape reduction that is used as a "cover" to destroy Australian businesses in favour of foreign businesses, where the whole principle of the overarching policy is to create fair competition and a level playing field to assist Australian businesses, is unjustifiable.

5. Addressing the terms of reference

5.1 The effects on compliance costs (in hours and money), economic output, employment and government revenue

5.1.1 Maritime cabotage is a policy designed to provide fair competition for Australian ship owners and ship charterers and all the related businesses that support Australian owned and operated ships covering crew provision, ship maintenance and repair, ship bunkering, ship provisioning, as well as legal, insurance and financing businesses.

5.1.2 Red tape reduction that undermines the policy objective of supporting Australian businesses and creating investment in Australia has a detrimental impact on Australian economic output, on Australian employment and on Australian taxation revenue.

5.2 Any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;

5.2.1 This submission, at section 4.10.1 and 4.10.2 identifies two areas where there is an opportunity to reduce red tape by amending the CT Act. The details can be found in the MUA submission to the Government at Attachment? to this submission.

5.3 The impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged

5.3.1 The undermining of maritime cabotage through so-called red tape reduction has already and will in future if the Government's Discussion Paper proposals are translated into legislation result in extending favoured treatment for foreign ships in Australian coastal waters. This commercially damages Australian businesses, and has the consequence of removal of employment of Australian seafarers and a loss of employment opportunity for people wishing to establish a career in the Australian maritime industry. While seafaring is not a low skilled occupation, the lower end of the skill hierarchy, essentially Ratings at AQF Certificate Level III, provides an important entry point to maritime employment. Entry at this level provides a career pathway into the Deck and Engineering occupational streams and also into landside maritime occupations.

5.3.2 The type of red tape reduction being proposed by the Coalition Government will further undermine the maritime skills base in Australia, thus lowering Australian shipping industry productivity.

5.4 The effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape

5.4.1 Regrettably no recent Government has managed to achieve the right balance between implementing the principle of maritime cabotage, by providing for fair competition that would result in maintenance of a floor level of Australian ships in Australian coastal trade whilst at the same time establishing a regulatory system that is simple, efficient and is based on commercial principles. Such a system is available and could be given effect by modest changes to the CT Act, which would inevitably result in significant new investment in the Australian shipping industry and the wider maritime industry to facilitate the operation of those ships eg new fit-for-purpose port infrastructure.

5.4.2 This policy vacuum has largely arisen due to the complete absence of any maritime or shipping policy and commercial capability in the responsible Department – the Department of Infrastructure and Regional Development and its sub-agencies such as the National Transport Commission – nor in any other section of Government eg Treasury, Department of Trade or the Department of Industry, Innovation and Science.

5.4.3 Ministers of all recent Governments have been poorly advised by the Department of Infrastructure and Regional Development, the National Transport Commission and Treasury. Key evidence for this statement is the fact that after the Rudd and Gillard Governments had undertaken a Parliamentary Inquiry in 2008, established a senior industry based Shipping Policy Advisory Group in about 2010 and then established 3 high level Policy Reference Groups that spent over a year consulting in 2014 covering regulation, taxation and workforce development, the Department of Infrastructure's first suite of Bills released as exposure drafts late in 2013 were so poorly draft and had completely misunderstood how ship charters are arranged, that the whole Bill had to be hastily withdrawn and rewritten in about 6 weeks for introduction into the Parliament in March 2012 for passage in June 2012.

5.4.4 More recent evidence is that that the National Transport Commission released a Discussion Paper in August 2016 entitled *Who Moves What Where: Freight and Passenger Transport in Australia - Final Report August 2016*, using taxpayer dollars, analysing Australia's freight and passenger movements aimed at helping policy makers responsible for infrastructure, planning and investment, operational improvements and regulatory changes without a single reference to shipping, notwithstanding shipping has a domestic freight market share of around 17% and an international market share of close to 100%.

5.5 Alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;

5.5.1 The Australian Government has two alternative mechanisms (alternatives to the current regulatory structure of the CT Act) available to it implement the principle of maritime cabotage aimed at providing for fair competition in coastal shipping that would result in maintenance of a floor level of Australian ships in Australian coastal trade. These are:

5.5.1.1 Commercialising the CT Act by: (i) clarifying the Object of the CT Act and removing ambiguity; and (ii) by introduction of a contestability framework for settling the balance between Australian General Licensed ships and foreign Temporary Licensed ships, based on commercial principles well known in the shipping industry, supported by a commercial arbitration facility and pricing oversight by the Australian Competition and Consumer Commission (ACCC); and or

5.5.1.2 Developing a new and separate 'maritime crew visa' for non-nationals employed on ships issued with a Temporary License under the CT Act. Under current regularly arrangements in the CT Act, a Temporary License can be issued for a period of up to 12 months and multiple voyages can be authorised under that license. It is common practice for ship operators, cargo interests and or agents, all of which may be granted a Temporary License, to operate ships in the coastal trade for regular periods with the same foreign crew, regularly entering and exiting coastal ports.

A ship authorised to undertake coastal voyages under the Temporary License is granted an exemption from the import requirements of the *Customs Act 1901* under s112 of the CT Act, with the knock-on effect that the 5-day limit on a MCV holder being allowed to remain within the migration zone, is waived. This in effect enable foreign maritime crew to work within the migration zone without a work visa.

It is inappropriate, and inconsistent with the Government's work visa policy, that non-national seafarers on a MCV can work indefinitely within the migration zone without the usual safeguards applying to a work visa. Such non-national seafarers employed on Temporary Licensed ships are not 'in-transit' as part of a continuing international voyage (the purpose on a MCV), but are engaged in the Australian labour market within the migration zone on an indefinite basis. In those circumstances, the MCV is not being applied as a genuine transit visa, and is an inappropriate visa for these non-national seafarers who are working in Australia.

There is strong justification for a separate class of "maritime crew visa' for non-nationals employed on ships operating under a Temporary License, that contains the standard labour market testing of a work visa such as required for a Temporary Work (Skilled) visa (subclass 457), including payment of market rates and supported by the Specification of Income Threshold and Annual Earnings made under the Migration Regulations 1994.

Such an outcome would be consistent with a recent decision of the Canadian Government to reach an out of court settlement with the Seafarers' International Union of Canada. The settlement is in response to a large number of lawsuits on-foot in the Canadian Federal Court alleging systematic breaches of the Canadian Temporary Foreign Worker Program, which operates in tandem with the *Canadian Coasting Trade Act 1992*, on which Australia's CT Act is in part, modelled.

The out of court settlement essentially upholds a key provision in the Canadian Coasting Trade Act, namely the requirement that an applicant for a coastal trade license must undertake a Labour Market Impact Assessment managed by Human Resource and Skills Development Canada for the approval of work permits issued by Citizenship and Immigration Canada, to ascertain if there are Canadian seafarers available and certificated to undertake work on the foreign ship seeking the coasting trade license.

Such a labour market assessment is consistent with the labour market testing requirements for obtaining a temporary work visa in Australia, which should apply to non-national seafarers employed on ships issued with a Temporary License under Australia's CT Act, aimed at providing a maritime visa policy regime that is consistent with onshore requirements.

Attachment A

Nations of commercial and strategic importance to Australia which retain maritime cabotage

The USA. US cabotage is contained in the US *Merchant Marine Act 1920* (commonly referred to as the Jones Act) which reserves to US-flagged vessels, which must also be US citizen crewed and constructed in the US, the right to transport cargo and passengers between US ports. US cabotage policy is bi-partisan and has been confirmed as central to US Defence and maritime security by successive Presidents from both major parties over the past 2 centuries.

Canada. Canadian cabotage is contained in the Canadian *Coasting Trade Act*. It provides for licenses to be issued to foreign ships where no Canadian ship is available or suitable but under strict conditions, requiring a proper market evaluation of the application for a license. Importantly, the Act and associated regulations and guidelines requires foreign ships crew members engaged on ships under a license to require a work permit to operate in the Canadian coastal trade. To obtain a work permit requires a Labour Market Impact Assessment (LMIA) to be undertaken to support the work permit application. If there are Canadian seafarers available to fill the roles, the assessment and hence the work permit might be refused. This acts to support the Canadian cabotage system by limiting the number of licenses issued to foreign ships. Foreign flag vessels operating under waiver carried about 2.7 percent of all coasting trade traffic in 2006, indicating very few licenses are issued.

Indonesia. Cabotage principles were implemented when the domestic shipping industry in Indonesia almost collapsed in the period up to 2005 as a result of foreign vessels engaging in coastal sea transportation. The Indonesian government implemented a cabotage policy in 2005. Indonesia's shipping and offshore marine industry underwent major changes since the introduction of a comprehensive Maritime Law No 17 of 2008 which was aimed at providing business opportunities and greater market share to Indonesian companies. Article 8 of the Maritime Law No 17 of 2008 sets out the following principles:

- That activities relating to domestic sea transportation must be performed by an Indonesian Sea carriage company using an Indonesian flagged vessel which are manned by Indonesian crews; and
- Non-Indonesian sea flagged vessels are prohibited from carrying passengers and/or goods between islands or ports in Indonesian waters.

In 2011 some exemptions were provided for certain offshore oil and gas vessels as Indonesia did not have sufficient offshore ships on its register. Exemptions for oil and gas survey vessels, offshore constructions vessels, dredging, salvaging and underwater works expired in December 2014. The current exemptions for jackups, semisubmersibles, deepwater drill ships, tender-assist and swamp bridge rigs were due to expire in December 2015. Many of these vessels are now being built in Indonesia.

China. China maintains a domestic maritime cabotage policy through its Water Transport Management and Registration Regulations of May 1987. There has been some relaxation of the provisions on a port by port basis, allowing Chinese

owned, but foreign flagged vessels, to carry container cargo between specified domestic ports.

Japan. Maintains a system of maritime cabotage given effect by Article 3 of the Ships Act. The Japanese system allows ships of a limited number of foreign countries to operate in the coastal trade as a part of reciprocal trade arrangements when granted a permit from the Ministry of Land, Instructure, Transport and Tourism.

Brazil. Brazilian Law 9.432/97 (“Brazilian Shipping Act”) - created the Brazilian Especial Register (REB) and several incentives for the Brazilian flag/BSC and the shipbuilding sector in Brazil. Brazil also established a set of rules creating restrictions on foreign owners and vessels to operate in cabotage, offshore support navigation, port navigation and also inland/river navigation. Only Brazilian shipping companies are allowed to charter foreign vessels into the Brazilian jurisdictional waters. Brazilian flag vessels, as general rule, also have the priority to operate in such navigation activities, being the only foreign vessels authorized to operate in case of non-availability of Brazilian flag vessels. In essence the law requires foreign carriers engaged in cabotage trades to have one domestic flagged vessel in their fleet.

India. Maintains a system of maritime cabotage under its Merchant Shipping Act. In 2005 the rules were partially relaxed to allow foreign carriers to engage in intra-port container movements between some ports, aimed at inducing feeder competition. Foreign companies can purchase Indian shipping companies to engage in trade and can charter Indian flagged vessels to undertake coastal trade. A freight tax is imposed on foreign ships engaged in inter-port trade.

European Union. In Europe, an EU-flag ship is eligible to participate in the cabotage trades of any other EU state. Within Europe, each country may impose crew nationality requirements, vessel ownership requirements and fiscal requirements on owners. In addition, States that retain some restriction on access for foreign vessels usually maintain a waiver system based on the condition of non-availability or unsuitability of a national- or EU-flag ship. The widening of the cabotage area has enabled more than shuttle services to develop, so that operators can optimize their offerings to suit opportunities. This liberalization enlarged the region in which short sea services could operate and gave European vessel operators the longer routes that enabled short sea to compete effectively with land based transport.

Attachment B

Australian ships lost from the Australian coastal trade since 1 July 2012

Ship name	Date	Description
CSL Brisbane	2016	**CSL Brisbane** - The foreign flagged Transitional General Licensed *CSL Brisbane* is no longer trading on the Australian coast. The cargo previously carried on the *CSL Brisbane* is now carried on foreign flagged ships under TLs issued by the Minister's Delegate, carrying the same volume of cargo for the same shippers, principally Australian cement companies
British Fidelity	2016 March	**British Fidelity** - The foreign flagged Transitional General Licenced (TGL) and Australian crewed *British Fidelity* was withdrawn from the coastal trade by BP. It is now crewed by ASP.
CSL Melbourne	2016 February	**CSL Melbourne** - The foreign flagged Transitional General Licensed *CSL Melbourne* is no longer trading on the Australian coast. The cargo previously carried on the *CSL Melbourne* is now carried on foreign flagged ships under TLs issued by the Minister's Delegate, carrying the same volume of cargo for the same shipper, Rio Tinto/Pacific Aluminium.
MV Portland	2016 January	**MV Portland** - The Australian flagged and Australian crewed *MV Portland* carrying Alcoa alumina was replaced by a foreign flagged ship with foreign crew – the same volume of alumina requires transporting.
Alexander Spirit	2015 July	**Alexander Spirit** - The foreign flagged Transitional General Licenced (TGL) and Australian crewed *Alexander Spirit* was withdrawn from service by Caltex due to closure of the Kurnell refinery. It has been replaced by FOC and is again trading on the coast under a foreign flag.
British Loyalty	2015 May	**British Loyalty** - The foreign flagged Transitional General Licenced (TGL) and Australian crewed *British Loyalty* was withdrawn from service by BP due to closure of BPs Bulwer refinery in Brisbane. It has since left the coast. The same volume of clean petroleum is still required to be transported around the Australian coast.
CSL Pacific	2015 April	Withdrawn from the coast and broken up due to old age but not replaced.
Hugli Spirit	2015 January	**Hugli Spirit** - The Bahamas flagged and Australian crewed *Hugli Spirit* was withdrawn from service by Caltex due to closure of Caltex Lytton refinery in Brisbane.

Pacific Triangle	2014 December	**Pacific Triangle** - The Australian flagged and crewed *Pacific Triangle* withdrawn by BHP due to a closure of a blast furnace at the Port Kembla steelworks.
Tandara Spirit	2014 November	**Tandara Spirit** - The Australian flagged and crewed *Tandara Spirit* was withdrawn from service by Viva due to increased local demand reducing shipping from Viva's Geelong refinery. Replaced by FOC.
Pioneer	2014	**Pioneer** - The Australian flagged and Australian crewed *Pioneer* was withdrawn from the sugar trade by Sugar Australia, due to lower volumes of sugar being required by the Yarraville refinery. The ship was re-flagged to Hong Kong and now makes a mix of Australian and international voyages.
Lindesay Clark	2013 September	**Lindesay Clark** - The Australian flagged and Australian crewed *Lindesay Clarke* was withdrawn from Rio Tinto's alumina trade due to the closure of Point Henry smelter by Alcoa. It was previously licenced but now not operating as a domestic ship.
Total = 13 ships, with a loss of seafaring employment of over 500 seafarers		

Attachment C

The industry policy directions Green Paper, which was presented to the Government in late 2016

- Separately provided.

Attachment D

MUA policy views to supplement the Industry Green Paper – A Submission to the Hon Darren Chester, Minister for Infrastructure and Transport - January 2017

Reform of national shipping policy – rebuilding the Australian shipping industry

Introduction – the MUA commitment to help rebuild Australian shipping

1. The MUA remains committed to playing a constructive role in working with all industry stakeholders and Governments, both Federal and State/Territory, and with politicians from all parties and Independents, to find solutions that will rebuild the Australian shipping industry.

2. The MUA acknowledges that those solutions must be cognisant of global economic conditions and that they must ensure that Australian shipping is modern, efficient and fit for purpose. As a service industry, shipping must positively contribute to manufacturing and export/import supply chains, and facilitate trade.

5.1.

3. At the same time, Australian shipping must support Australian employment and encourage shipowners/entrepreneurs to invest in ships and ship infrastructure. Australia should be reaping economic benefit from supporting a vibrant national shipping industry, that comprises a coastal and an international dimension.

5.2.

4. Importantly, the MUA remains committed to play its part in reducing the cost differential between an Australian crewed General Licensed (GL) ship and a foreign crewed Temporary Licensed (TL) ships operating in the Australian coastal trade through a process of continuous improvement.

Policy and regulatory stability is critical

5. The MUA acknowledges that the fundamental requirement to rebuilding Australian shipping is to achieve policy and regulatory stability. Investors and stakeholders alike require certainty about the policy objectives and the rules by which they are required to operate.

6. The key to achieving that policy and regulatory certainty is to remove ambiguity from the Object of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act), and to ensure the Object of the Act contains, inter alia a clear commitment to the role of General Licensed (GL) ships in the coastal trade.

7. This requires a political commitment to support a level of Australian content in coastal shipping i.e. to maintain the principle of maritime cabotage as exists in aviation, where the Government supports aviation cabotage. The Object of a reformed CT Act must therefore contain explicit support for GL ships (however

defined) so the remainder of the regulatory system is built around providing, under specified conditions, a role for such ships, supplemented by TL ships.

8. That is why multi-partisan support is critical to rebuilding Australian shipping. Partisan policy that shifts regularly with the political cycle is anathema to rebuilding this national strategic industry.

Why should Governments provide support for Australian General Licensed ships in the Australian shipping industry?

9. There are sound national interest reasons why Government should support a level of Australian content (in the form of General Licensed ships) in the Australian coastal trade. These are:

9.1 Australian shipping should not be 100% foreign owned and controlled, in the same way that Governments do not permit full foreign ownership and control of other strategic industries like aviation, communications, energy, agriculture etc.

9.2 Australian ships are necessary for coastal trade facilitation. The nation should not be totally reliant on what is largely an international spot market (or short to medium terms contract market) for the nation's domestic trade facilitation.

9.3 Australian ships are required for the nation's fuel security. It is essential to retain a level of Australian clean petroleum tanker capability to help guarantee the supply of fuel for both Defence and civilian use, given the very small petroleum refining capacity remaining in Australia, and our dependency on foreign imported fuels.

9.4 Australian ships are an essential element of maritime security i.e. to support Border Protection, Customs surveillance, oceanographic research and mapping, and to secure the nation's offshore oil and gas facilities and fisheries.

9.5 Australian ships are critical to support the national Defence effort or Navy capability in times of conflict and for humanitarian missions.

9.6 Australian ships are important in maintaining the environmental integrity of Australia's coastline and waterways.

A new regulatory, Fair Work Act and fiscal environment to underpin a role for Australian content in coastal shipping

10. Acceptance of the principle that there are national interest reasons to support Australian content in Australian coastal shipping by necessity requires adoption of a regulatory framework that provides a statutory mechanism to enable the commercial parties (shippers [cargo interests] and ship service providers) to strike a balance between the number and type of GL ships and TL ships in any particular trade. In striking that balance, the supply chain requirements of the shipper, including fair freight rates, and the business imperatives of the ship provider must be met, having regard to competition principles, and efficient ship utilisation, that provides a fair return on capital for both ships and ship infrastructure such as ports and stevedoring.

Changes to the regulatory environment (the Coastal Trading Act, the Customs Act and the Shipping Registration Act)

11. The main legislative changes that are required to give effect to the above principle are:

11.1 Removing ambiguity from the Object of the CT Act.

11.2 Streamlining the license administration process, and increasing the role of the commercial parties.

11.3 Provision of a commercial mechanism to enable the parties to settle the right balance between GL ships and TL ships in each trade, based on available data and trade forecasts, ship availability and other specified criteria.

11.4 Attaching the license to the ship and not the voyage aimed at providing more flexibility for the commercial parties to improve ship utilisation rates and product inventory requirements through better use of cross-trading, back-loading and triangulation opportunities (as was proposed in the Shipping Legislation Amendment Bill 2015).

11.5 Removing the role of freight rates as a "test" in determining GL ship suitability and replacing that condition by a trade volume "test", such that where the trade volume can commercially sustain a GL ship, a percentage {to be determined through a negotiation process) of the trade volume in each forward 3 year cycle in that trade is required to be carried in a GL ship, supported as necessary by TL ships (3 years is considered the minimum commercially viable period for a ship time charter).

11.6 That the GL license holder have first right to supply TL ships to the shipper in each GL trade.

11.7 That ships registered on the Australian International Ship Register be given preference over foreign ships in issuing a TL to ship i.e. there be a new license type, a TL Plus, that requires a specified level of Australian content for TL Plus ships.

11.8 Providing a business case procedure for removal of a GL ship from a trade whereby a GL ship would not be permitted to be withdrawn from a trade where the volume in the forward 12 months is within a range of variation (say 10%) of that of the previous year without 6 months' notice being given and a business case for the removal of the GL ship being lodged with the Minister (or Minister's delegate) that must provide for the maintenance of a level of Australian content in the replacement ship, and a contractual commitment to return to the use of a GL ship where the trade volume equals or exceeds the pre-existing trade volume.

11.9 Protecting national interest trades, including Bass Strait (the Blue Highway already supported by the Tasmanian Freight Equalisation Scheme) and community service trades such as those supplying remote and Island communities.

11.10 Include ACCC oversight to monitor pricing behaviour in monopoly trades – a form of economic regulation aimed at eliminating price gouging and delivering a sustainable freight rate. Under such an arrangement, shipping services would be a 'declared' service due to their national strategic significance.

11.11 Amend the Customs Act to refine the requirements for ship importation to rectify current inequities in the application of the importation requirements, with flow on effects for industry e.g. for petroleum tanker operators transporting oil from FPSOs to land based facilities; for dry docking/ship maintenance, aimed for example at encouraging the development of the Australian large vessel cruise sector.

Mandatory inclusion of intra-state trade within the scope of the Coastal Trading Act

12. A truly national shipping regulatory framework requires its application to all coastal trade, including intra-state trade. Amending the CT Act to achieve this will overcome anomalies where some shippers have both inter-state and intra-state trade.

12.1 This may require cooperation from State/NT Governments in the form of complementary legislation.

Attachment E

The Coastal Shipping Reforms Discussion Paper released by the Hon Darren Chester, Minister for Infrastructure and Transport – March 2017

- Separately attached.