MARITIME INDUSTRY AUSTRALIA LIMITED

Senate Select Committee on Red Tape

Effect of restrictions and prohibitions on business (red tape) on the economy and community

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11 April 2017

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Introduction

This submission is made on behalf of Maritime Industry Australia Ltd (MIAL). MIAL represent the collective interests of maritime businesses, including those operating vessels or facilities from Australia.

MIAL also represents employers of Australian and international maritime labour and operators of vessels under Australian and foreign flags.

The trading fleet or 'bluewater' Members of MIAL include companies whose primary business is to provide sea transport services to the freight market as well as companies whose shipping operations form an element of their supply chain, hence some of MIAL's Members are very large cargo interests.

MIAL Members participating in domestic trade utilise the existing regime of General Licenses, Temporary Licenses and Transitional General Licenses. MIAL Members are active in dedicated international trades under both Australian and foreign flags.

MIAL is uniquely positioned to provide dedicated maritime expertise and advice, and is driven to promote a sustainable, vibrant and competitive Australian Maritime Industry and to expand the Australian maritime cluster.

There are many definitions of cabotage, in this submission cabotage is taken to describe a set of laws made by a government of a country to prevent or limit the transport of goods or people within the country's borders by foreign ships.

In the Australian shipping context, cabotage is a result of a series of laws including:

- Coastal Trading Act 2012
- Customs Act 1908 with flow of effects to immigration
- Fair Work Act 2009

The CTA provides preference for an Australian ship to be used to carry goods or passengers. The CTA does not compel an Australian ship to exist, and indeed very few remain. The vast majority of all shipping around the Australian coast line is conducted by foreign ships. The CTA covers trade between the States not within a State (unless an operator chooses to opt-in to the CTA).

The Customs Act provides for the importation of ships when they are being entered for home consumption. The circumstances/situations that result in importation are not clear.

The Immigration Act provides that seafarers working in Australia have appropriate work rights.

The FWA provides that the FWA apply and that the Seagoing Industry Award (SIA) Part B wages be paid to foreign seafarers, when a ship is on its third or subsequent voyages under a temporary license in a 12 month period.

Each of these Acts influence the participation of ships, Australian and foreign, around the Australian coast.

This submission addresses the terms of reference released by the Committee.

TOR a)

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

Coastal Trading Act

Different trade types are being impacted differently by the implementation of the Coastal Trading Act. Advice from the largest carrier of containerised coastal cargo around Australia (using foreign flag vessels under temporary licences), ANL Container Line, is that:

1) Cargo volumes in their business have grown by 25% since the introduction of the Coastal Trading Act
2) Freight rates have dropped by 3.5% during that time
3) Sea Freight is extremely competitive - being around 50% the cost of using rail.

Further advice provided includes the following:
"We see that the current system is working well. Cargo is moving with the potential for more, licence requirements are clear and so are the extra wage requirements under the FWA. The Department's Temporary Licence application process is straight forward, swift and in tune with cargo requirements. There are currently no impediments to cargo moving in terms of freight rate or available space. The current regime gives some discipline and order in terms certainty of ongoing space and rate stability to customers. It is these factors that will enable cargo to be mode shifted off rail/road and onto sea."

Statements such as "shipping containers from Melbourne to Brisbane is equal to shipping the same product from Melbourne to Singapore" requires clarification and a better understanding of the market. Firstly, this movement is being done on a foreign flagged, foreign crewed ship in both scenarios – so there is no 'Australian ship' cost being borne in this market. Secondly, the outbound demand (cargo from Australia) is very low which results in freight rates being driven down competitively for voyages to Singapore. Shipping in this sector is not a "cost plus" business. Rates are driven by competition and market forces. It is simply not a relevant comparison to make to demonstrate an issue with the coastal trading system.

Fair Work Act

The cost of paying the wages applicable under SIA Part B has been estimated at approximately $1500 per ship per day for qualifying voyages. It has also been estimated that a considerable administration cost is required to ensure compliance. This cost is born by the foreign employer of the crew.

TOR b)

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

Access to coastal trades is only regulated by the federal government, therefore there is no duplication across jurisdictions.

In the past both Queensland and Western Australia applied some regulation in this area however both have since ceased and when they did exist they were not duplication as the federal government does not regulate intra-state trades. There is currently no economic regulation of maritime trade within a State/Territory anywhere in Australia.

At the Federal level, there are several areas that could be improved to remove red tape and provide certainty for industry.

MIAL is supportive of changes to the following Acts:

Coastal Trading Act

Remove the five voyage minimum

The requirement that an application for a temporary licence, and an application to vary a temporary licence for new matters, must include a minimum number of voyages places an unnecessary red tape burden on applicants. MIAL recommends that the requirement should be removed.

Operators and shippers should be permitted to make temporary licence applications/variations for voyages in groups of one or more.

Introduce express temporary licenses and express variations

Many cargo types involve the movement of goods for which there are no general licence ships of that type.

Where an application is of the type where it is known there are no Australian ships capable of carrying the cargo (i.e. crude oil), a method to expedite approval for carriage of such cargo ought to be available. Similarly the process for seeking and granting a variation, where there is no Australian ship ought to be eliminated or made as straight forward as possible.

Fair Work Act

It is MIAL's view that the FW Act ought not apply to ships trading under temporary licences as it adds no discernible benefit to the Australian industry, national economy and as seafarers are not subject to Australian taxation or cost of living pressures (they will be living on board when living in Australia attached to a vessel), it is entirely appropriate that they receive terms and conditions of employment that have been negotiated between employees/unions and shipowners which are consistent with the industrial laws of the flag state of the vessel.

As an industry peak body with Members who employ both Australian and international labour operating in both the foreign and domestic market, MIAL has assisted operators and charterers to understand the impact of changes to the *Fair Work Regulations 2009* (FW Regs). This change was as a result of a policy decision in 2009 that elements of the *Fair Work Act 2009* (FW Act) including the applicable modern award would apply to vessels that operate under continuing voyage permits or undertake three or more voyages under single voyage permits issued under the *Navigation Act 1912* within a 12 month period. A consequential amendment to the FW Regs occurred when the Coastal Trading Act was introduced.

In our experience, MIAL Members who directly or through related entities operated or chartered vessels under single voyage permits or later temporary licences, made every effort to ensure that they complied with, or advised shipowners whose vessels they had chartered to comply with, their

obligations under the FW Act. Notwithstanding this, the following problems and difficulties were observed:

- Most shipowners/employers of crew already had collective agreements or contracts in place comprehensively detailing the terms and conditions of seafarers employment which complied with any requirements of the flag state of the vessel. This change was the source of much confusion.
- The changes resulted in an increase in operating costs of the vessel. This was despite seafarers who were the recipient of any additional amounts not being subject to Australian income tax or cost of living pressures. There was no identifiable benefit to the Australian economy.
- There has been confusion within industry about when the FW Act and the Seagoing Industry Modern Award (Award) Part B applies to a vessel if a deviation occurs whilst on a coastal voyage and the additional time counts towards the crew coastal voyage time for the first Charterer. Additional red tape is encountered to manage this.
- While Part B of the Award does not contain a high number of provisions (when compared to Part A) some of these still create difficulties in that they are different to the usual agreed terms of the seafarer, and calculating things such as a different leave ratio, overtime payments for weekends and public holidays create complications for shipowners/employers of crew. International agreements generally incorporate an overtime rate which includes compensation for additional hours and public holidays. The global maritime industry is a 24/7 industry, and Part B conditions such as the need to calculate overtime when hours are not “ordinary” causes unnecessary difficulty.
- It has never been the position of MIAL that a legitimate way of making Australian vessels more competitive in the global marketplace is to arbitrarily and without any identifiable benefit, increase the operating costs of foreign vessel operating in Australia. It is MIAL’s view that this policy decision had not increased the competitiveness of Australian vessels operating in the domestic market.
- The FW Act has been extended to cover foreign ships. This has the effect of covering foreign national employees and foreign employers. The vessel often has limited if any contact with an Australian entity. This creates enormous jurisdictional issues for the enforcement body, the Fair Work Ombudsman (FWO).

Domestic operators with Australian vessels are largely unaffected by the extended application of the FW Act, and MIAL is not aware of any reports of an increase in business directed through Australian vessels as a result of the change.

International operators have experienced confusion in attempting to apply conditions of employment different to those which they have negotiated and agreed with their seafarers or local unions. Foreign ships are often moving in and out of the Australian jurisdiction, so the FW Act will only ever apply to a portion of its operations, creating confusion as to what, if any, differential between a crew members contracted pay under their negotiated contract or collective agreement and Part B of the Award amounts to.

Anecdotally, we have heard that there is confusion amongst seafarers about their entitlements and when the FW Regs operate to extend the FW Act. The FW Regs apply when a ship is a temporary licenced ship and it has commenced its third (or more) voyage under temporary licence – purely international trading ships and vessels that only engage in one or two domestic voyages every 12 months are not covered by the FW Act.

The complexity of the application of Part B, and the inability of the Government to police compliance opens the way for the union – the International Transport Workers Federation (ITF) to take a role in assessing and reporting on compliance. In the view of MIAL it is unacceptable that any union play such a role and the Government ought to enforce their own legislation.

It is our understanding that the obligation to pay Award Part B wages and the costs associated with this has been contemplated in chartering arrangements, resulting in an increase in the costs of chartering foreign vessels engaged in domestic trade.

Customs - Importation

Since the introduction of the Coastal Trading Act, there have been a number of issues relating to Customs importation of vessels which has resulted in unsustainable and costly additional burden to industry, with little or no benefit to the nation. Furthermore, there are a number of circumstances whereby threatened importation has resulted operators taking a significant amount of business elsewhere.

Ship importation for the purpose of the *Customs Act 1901* (Customs Act) has many flow-on effects, many of which are complex and have yet to be fully explored, but one impact is clear - that is the visa status of the ship's crew. Following 'importation' maritime crew visas automatically expire after five days and the crew working on board an imported trading vessel must have Australian work rights. Where visa's are available, this represents a significant cost and administrative burden, is unsustainable and for most, an insurmountable barrier to doing business in Australia.

There are a range of potential regulatory mechanisms that might be used to exempt foreign vessels undertaking coastal trading voyages from the importation provisions in the Customs Act. However, the issues around vessel importation go beyond that which could be dealt with through the Coastal Trading Act – such as vessels wishing to undergo dry-docking in Australia.

In our view, dealing with these issues through the Customs Act should also be considered. Possible mechanisms include:

- New Customs regulation to provide for circumstances whereby importation is not in the 'national interest' (e.g. ship used as temporary storage facility).
- Reinstate the "90 day rule" which was an interpretation that vessels could remain in Australia for a period of 90 days without being imported.
- Removal of some key flow on effects from importation (such as immigration requirements) in some circumstances.
- Extending the reach of the Coastal Trading Act such that a temporary licence could be provided for movement of a particular type of cargo (e.g. crude oil) from offshore installations to Australian ports or other facilities. This could be contemplated through amending the definition of "offshore industry vessels" under the Coastal Trading Act.

  For example, amend the "offshore industry vessel" definition in the Coastal Trading Act to read:

  "a vessel that is use wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the mineral and other non-living resources of the seabed and its subsoil. ***This does not include a vessel that is used wholly or principally in transporting crude oil or condensate to an Australian port***."

  This would result in these types of vessels no longer being excluded from the Coastal Trading Act as per section 10.

- Amending section 112 of the Coastal Trading Act to extend the types of vessels that are exempt from importation under the Customs Act. This could include amending section 112 of the Coastal Trading Act to read:

  "A vessel is not imported into Australia for the purposes of the *Customs Act 1901* if it is used to carry passengers or cargo under a temporary licence or an emergency licence, ***or if it is a vessel or within a class of vessels that is subject to an exemption under section 11(1)"***

  To remove uncertainty, and any consequences of importation for Australian International Shipping Register (AISR) vessels, the following amendment to section 112 could also be made:

  "A vessel is not imported into Australia for the purposes of the *Customs Act 1901* if it is used to carry passengers or cargo under a temporary licence or an emergency licence, ***if it is a vessel registered on the Australian International Shipping Register, or if it is a vessel or within a class of vessels that is subject to an exemption under section 11(1)"***

Customs – Duty on Bunkers

The duty paid on coastal voyage bunker consumption is an expensive and onerous task to complete to ensure compliance with local tax/duty regulations on fuel. Dialogue with the Tax Office in 2015 identified this as an issue for both the industry and the tax office in terms of resources expended vs revenue generation. It also identified marine use of fuel as holding no risk of the fuel being diverted for other uses, therefore any change affecting marine presented no risk to the core policy settings. In 2015, MIAL wrote to the then Treasure and Minister for Immigration and Border Protection and Minister for Industry and Science. A copy of this letter is attached at Annex A providing a full explanation of the issue.

The matter has not progressed. We would welcome any effort to progress this matter.

TOR c)

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

The Coastal Trading Act provides preference for an Australian ship but does not compel an Australian ship to exist. Therefore, the vast majority* of all shipping done under the 'cabotage' regime outlined via the Coastal Trading Act is conducted by foreign ships with foreign crews. Therefore, the opportunity for Australian's to work in the Australian cabotage trades is extremely limited.

* the remaining areas of Australian flagged shipping are: six ships plying Bass Strait; 4 dry bulk carriers and a fleet of vessels servicing Northern Australian ports and communities.

TOR d)

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

The only previous attempt to reduce red tape was to de-regulate the sector completely which was not supported by the Parliament in late 2015. Indeed, many of the issues that have arisen with Customs treatment of ships after the introduction of the Coastal Trading Act in 2012 have added to the red tape burden.

TOR e)

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

If the intent of the current regulation is to ensure the nation has some degree of maritime capability then this can certainly be achieved via other measures.

There are sound economic reasons to foster a local maritime industry.

Recent economic analysis on the contribution of the industry[1] identifies that improving the regulatory and fiscal settings for Australian based operations provides the following benefits:

- Additional contribution to the economy of $4.25 billion to GDP
- 9,147 additional jobs
- $867 million in additional taxation revenue.

Importantly, these positive impacts would be achieved at no net cost to the Australian economy.

Why wouldn't Australia take the steps necessary to realise this potential and be rewarded with economic and employment gains?

These gains could of course be realised even if Australian operations were not involved in coastal trading, however experience shows that the greatest benefits of maritime activity are obtained when all sea transport activity is involved.

Importantly, it is not too late to adopt measures in support of growing the Australian fleet and, in turn, the broader Australian maritime industry. Other countries are continuing to introduce new or improved taxation regimes which are supportive of growth in their local shipping industry most recently, Ireland. This demonstrates the value which other countries continue to place on the economic benefits of a strong maritime sector and that countries remain committed to the goal of fleet growth:

"The Government has prioritised the marine as a key area for further growth under the Harnessing Our Ocean Wealth Strategy, with a target of doubling the value of Ireland's blue economy by 2030. I am keen to ensure that there is a supportive financial environment underpinning this target and so I intend to review the financial and taxation supports and opportunities available to the marine sector.

My Department will work closely with the Marine Co-Ordination Group to examine strategic measures that could be introduced to help Ireland as an island nation to fulfil its potential in the marine area."[2]

If the nation wants to retain Australian content in maritime activities then the following are required to make Australia a truly competitive place to base a business from:

[1] The Economic Contribution of the Australian Maritime Industry. PricewaterhouseCoopers. February 2015
[2] Financial Statement of the Minister for Finance, Mr Michael Noonan, T.D, 14 October 2014, available at : http://www.budget.gov.ie/Budgets/2015/FinancialStatement.aspx

Corporate tax

The zero-tax rate of income tax on profits derived from shipping activities falls short of being competitive with other nations in the region due to the tax treatment on the distribution of profits.

This makes Australia uncompetitive as a place to base ship owning and operating businesses from and is readily addressed via changes to the treatment of dividends.

MIAL suggests the following changes could assist with creating a fiscal environment that is attractive to ship operating businesses:

a) Introduce deemed franking credits in respect of dividends to resident shareholders.
b) Introduce dividend withholding tax exemption in respect of dividends to non-resident shareholders.

TOR f)

how different jurisdictions in Australia and internationally have attempted to reduce red tape; and

International examples of cabotage for maritime activities are many and varied. As is to be expected, those jurisdictions with the strictest cabotage settings (i.e. the USA) have very low levels of red tape as the rules are very cut and dried. Other places such as Canada, have a system that allows foreign ship participation in certain circumstances and hence the processes / red tape increase accordingly.

The 'red tape' that exists because of the CTA is uniquely ours and MIAL is of the view that much of it can be fixed quickly and painlessly.

More important for the shipping industry and its' customers however is long term certainty and stability of policy settings. Other nations have identified this as being crucial and have

Why regulate coastal trade?

Australian maritime transport is subject to competition from foreign companies operating under significantly more favourable cost structures and commercial taxation arrangements. The strategic benefits of having a national shipping industry require that maritime transport be regulated differently to other transport modes in Australia.

Many countries around the world recognise both the importance of having a strong and sustainable local shipping industry and the need to regulate access to coastal trade to ensure its long-term viability. The various approaches to cabotage range from highly restrictive (US, Japan) to open and flexible (Australia, New Zealand)[3]. It is difficult to find a country or a region (in the case of the EU) with significant coastal trade that does not have some form of cabotage.

A snapshot of coastal shipping restrictions occurring in other countries can be found in Table 1 below.

Table 1: Comparison of other countries with regulated coastal shipping.

Country	Regulated?	Policy measures	Policy objective

[3] See International Transport Forum: *Liberalisation in Maritime Transport, Mary R. Brooks*

US	Yes[4]	Highly restrictive. Coastal trade restricted to US built, owned, crewed and flagged ships.	Promotion and maintenance of the US merchant marine industry.
European Union	Yes[5]	Maritime transport services within a Member State, i.e. purely national connections, can be offered by companies of other Member States. Some member states restrict access to flags of EU members, others don't.	Liberalization between EU members) while supporting the policies of EU member states to support their own shipping industries. Increasing opportunity to access EU cargo while maintaining some restrictions to EU flags.
Canada	Yes[6]	Coasting Trade Act restricts access to coastal trade and short sea shipping to Canadian ships unless not available.	Maintain and enhance Canadian short sea shipping fleet and grow maritime cluster
India	Yes[7]	A flexible, preferential cabotage system. Foreign flag ships can be used where an Indian vessel is not available. Also, some restrictions on regular international voyages	Freight rate and tonnage access stability.
Japan	Yes[8]	Restricts access to coastal shipping of cargo or passengers to Japanese ships, except under permit	National security, the reliable transport of everyday goods for local residents and securing the employment of domestic crew members.
New Zealand	Yes but limited[9]	Restricts access to coastal trade to NZ ships or ships on demise charter to a New Zealand based operator who employs employees under NZ law – or a foreign ship who passes by NZ as part of an international voyage. Minister may authorise another ship if none of the above are available on terms the Minister thinks appropriate.	As part of a move to liberalized approach to a range of public policy areas in the 1990's. There are growing calls to reintroduce tighter regulation after the Rena incident to ensure appropriate safety and environmental protection.

TOR g)

any related matters

Tourism and Cruise Shipping

The Australian cruise ship sector is the fastest growing cruise market in the world - having experienced 14.6% increase in passenger numbers on the previous year and almost 20% annually over the past decade. [10] Further growth is projected as destinations and the quality of tonnage continues to improve.

Importantly, the Australian cruise ship sector is of significant value to the Australian economy generating $4.6 billion in economic opportunity in 2015/2016.[11]

[4] See the *Merchant Marine Act of 1920*, also known as the *Jones Act*
[5] See EU Council Re 3577/92/EEC (marine cabotage)
[6] See *Coastal Trading Act 1992* and *Customs and Excise Offshore Applications Act 1983*
[7] See *Merchant Shipping Act* (India) s407
[8] See the Ships Act, article 3.
[9] See *Marine Transport Act 1994* (NZ), s198
[10] Cruise Tourism's Contribution to the Australian Economy 2015 - 2016
[11] Cruise Tourism's Contribution to the Australian Economy 2015 - 2016

Either directly, through the interface with cruise ship operators, or indirectly with regard to passenger expenditure in port, the impact of cruise shipping on local economies is dramatic, stimulating local economic activity throughout the supply chain and assisting local industries to grow and expand.

The volume of high quality Australian agricultural products sought by cruise ship operators to maintain on board provisions for thousands of passengers is significant and forms an important source of income for many Australian businesses.

Furthermore, the demand for landside tourism and transport services stimulated by cruise ship port calls provides a great deal economic opportunity, not only for Australian iconic port cities, but importantly, many regional areas.

Currently, cruise ships are subject to an exemption from the application of the CTA under section 11. The exemption prescribes that cruise ships greater than 5000 gross tonnes, capable of a speed greater than 15 knots and able to carry more than 100 passengers are exempt from the Act, provided the ship is utilised wholly or primarily for the carriage of passengers between any ports in the Commonwealth or in the Territories, except between Victoria and Tasmania and has effect for the period commencing from 1 January 2013 and ceasing on 31 December 2017.

As such, cruise in this category are not required to apply for a licence under the Act when engaging in coastal trading. The stated purpose of the exemption is to promote tourism activity within Australia, recognising that Australia does not currently have any Australian registered vessels in this category.

The cruise industry wants to expand activity in Australia but is seeking a greater degree of business certainty, regulatory stability, and an environment where long term strategic business decisions related to international fleet deployment can be made with confidence. This requires stability in regulation that goes beyond the timeframe prescribed in the current exemption.

We note that section 11 (2) states that an exemption *may* be confined to one or more specified time period or voyage. As such, it is conceivable that the Minister could make such an exemption permanent, without the need for legislative amendment.

A permanent exemption would provide the cruise ship sector with the regulatory certainty it needs to further expand in the Australian market.

MARITIME INDUSTRY AUSTRALIA LIMITED

The Hon. Peter Dutton MP
Minister for Immigration and Border Protection
House of Representatives
Parliament House
Canberra ACT 2600

26 August 2015

Email: Peter.Dutton.MP@aph.gov.au

Dear Minister,

Re: Avoiding unnecessary administrative burden – Fuel Tax Credit Scheme

Maritime Industry Australia Ltd (MIAL) represents the maritime sector – one of the very broad suite of non-road diesel users currently utilising the Fuel Tax Credit (FTC) scheme. As you will be aware, the FTC scheme is incredibly important to the $9 billion Australian maritime industry. Without it, the cost of Australian maritime transport, including 99% of all Australian exports, would increase significantly.

Recently, MIAL has been working with the Australian Taxation Office (ATO) to help them develop a better understanding of how our industry is impacted by the application of duty (both customs and excise) on ships bunkers consumed on domestic voyages, and subsequent claims through the FTC scheme. In particular, the ATO was interested in the administrative and compliance impacts the current arrangement has on our industry overall.

As a result, it has been identified that the related administrative burden is significant and translates to costs of between $270,000 and $320,000 per annum per company. This cost includes the cost of capital that results from paying the duty upfront and then waiting to recover the funds via FTC and the labour and administrative cost of determining FTC entitlement and making the claim. In some circumstances there is also some confusion or uncertainty about when a vessel is on an international voyage (where no duty is payable) which results in duty being applied incorrectly. This issue is more prevalent when the shipping company is owned/operated by an international entity.

It is important to note that there is likely to be similarly significant costs related to the ATO's and Department of Immigration and Border Protection (DIBP) administration of the system, an activity which results overall in zero government revenue.

The ATO has advised that they have identified some minor amendments to legislation within the Treasury and DIBP portfolios that would circumvent the need to collect and refund duty resulting in significant savings to business and to Government. The savings to business will assist the maritime sector in competing with both the road and rail transport sectors.

MIAL believes that if fuel supplied as ships bunkers was made exempt from both customs and excise duty, there is no risk of any of this fuel being diverted for other uses due to the way the fuel is supplied (direct pipeline, barge or road tanker).

An initiative such as this not only makes sense but could deliver tangible dividends in line with the Government's deregulation agenda. As Minister for Immigration and Border Protection with responsibility for Customs, we urge you to pursue this initiative with your cabinet colleagues in the Treasury and Industry and Science portfolios so that the required minor amendments to legislation can be made.

Yours sincerely,

Teresa Lloyd
Chief Executive Officer

CC: The Hon. Joe Hockey MP, Treasurer
The Hon. Ian MacFarlane MP, Minister for Industry and Science