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Australian Government

Department of Infrastructure and Regional Development

Secretary

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Dear Mr Watling

Shipping Legislation Amendment Bill 2015

Thank you for your email dated 28 July 2015, inviting the Department to make a submission to the Senate Rural and Regional Affairs and Transport Legislation Committee's inquiry into the *Shipping Legislation Amendment Bill 2015*.

Attached is the Department's submission to the inquiry.

Yours sincerely

Mike Mrdak

19 August 2015

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Senate Rural and Regional Affairs and Transport Legislation Committee

Inquiry into the Shipping Legislation Amendment Bill 2015

Submission by the Department of Infrastructure and Regional Development

August 2015

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Submission in support of the *Shipping Legislation Amendment Bill 2015*

Introduction

1. On 25 June 2015, the Hon Warren Truss MP, the Deputy Prime Minister and Minister for Infrastructure and Regional Development, introduced the *Shipping Legislation Amendment Bill 2015* (the Bill) into the House of Representatives. The Bill provides a new framework for Australian coastal shipping regulation. The current three-tiered licensing system under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act) will be replaced by a single Coastal Shipping Permit (the Permit). There are also changes to wages and conditions for seafarers on foreign vessels predominantly engaging in coastal shipping.
2. This Submission provides context for the Bill, and an explanation of its key provisions. It has been prepared by the Department of Infrastructure and Regional Development, in consultation with the Department of Employment.
3. The current legislative framework for coastal shipping (including in relation to workplace relations issues) is described in Attachment A.

1. Recent Developments with Coastal Shipping and Shipping Regulation

Decline in the Number of Australian Registered Vessels and Changes in Freight Volumes

Changes in Freight Demand in Australia

4. The demand for domestic cargo transportation (by road, rail and sea) during the period between 2000 and 2012 period has grown. Overall the volume of freight across Australia has increased by 57%. In 2011-12, coastal shipping was responsible for around 17% of total domestic freight movements (measured in mass distance terms) and comprised 10 per cent of total freight volumes through Australian ports. Shipping's share of Australia's total freight transportation fell from 27% in 2000 to its lowest levels at below 17% in 2011-2012. Domestic shipping freight volumes peaked in 2006-07. Over the five years to 2013-14, shipping freight volumes have stabilised; only fluctuating by approximately 0.5% each year.
5. Total domestic freight volumes have quadrupled over the past four decades, predominantly due to significant growth in road freight and, more recently, strong growth in mining-related rail freight volumes. Between 2010 and 2030, Australia's overall freight task is expected to grow by 80%. The increase over this period is based on projected strong growth in domestic movements of bulk commodity exports, particularly iron ore and coal, and also by continuing growth in the road freight

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task. This figure also takes into account the projected growth in Gross Domestic Product, which is expected to increase much faster than the forecast population growth over the same period.

6. Coastal shipping is forecast to increase by 15% in the period to 2030, despite Australia's overall freight task being expected to grow by 80%. This projected growth figure of 15% is highly dependent on other coastal freight increasing to offset likely continuing declines in domestic petroleum and to a lesser extent, iron ore, movements. This growth is expected to translate by 2030 into an increase of total container movements through Australian ports by approximately 2.5 times the volume handled in 2010.

Australian Trading Fleet

7. *Decline of Australian General Licence holders and ageing of vessels:* The number of major trading vessels with an Australian General Licence has continued to decline. Over the first two years of the operation of the Act, there was a 63% decline in the carrying capacity of the major Australian registered vessels holding a coastal trading licence, relative to levels seen in 2011-12. The number of major (over 2,000 dead weight tonnes) Australian registered ships with coastal licences has more than halved; from thirty-six vessels in 2004-05 to just fifteen in 2013-14. Many ageing Australian registered vessels are not being replaced. The number of foreign ships in Australia on Transitional General Licences has also halved in recent years; leaving only eight currently operating.
8. As at 2013, internationally, 49% of the trading ships, and 79% of the world's gross tonnage, were under fifteen years old. In contrast, the average age of a major Australian ship operating under a General Licence is 23 years. The age of the ship has an adverse impact on its efficiency, and the level and cost of maintenance required. As the risk of mechanical failure increases, the vessels also cost more to insure. Australian ship operators have been progressively retiring their vessels, and not replacing them with General Licence vessels.
9. *Availability of Australian registered cargo ships:* For some types of cargo, there are limited numbers of Australian registered ships available. The number and type of vessels currently holding General Licences or Transitional General Licences are set out in Attachment B (noting that not all licensed vessels are currently servicing the Australian coast). The vast majority of general, petroleum and chemical products cargoes are currently being transported by foreign flagged vessels. With the exception of the Bass Strait ferries, which are owned by the Tasmanian Government (TT Line Company Pty Ltd), there are no Australian car carriers holding a General

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Licence. There are also no Australian licenced heavy-lift ships, which are designed to move very large loads that cannot be handled by standard ships.

10. *Passengers:* Carriage of passengers by coastal shipping is heavily focused on the Bass Strait trade, which is dominated by the General Licence ferries operated by TT-Line. The coastal cruise shipping sector currently has seven General Licenced vessels, mainly operating in the expedition cruise market. Domestic passengers are also carried by large foreign-flagged cruise liners operating under an exemption under the Act (see Attachment C).

Relative Labour Costs of Australian Shipping

11. As outlined by a number of stakeholders, labour costs in Australia are significantly higher than the international standard. Modelling by the Department of Employment estimates Part A of the Seagoing Industry Award 2010 (Seagoing Industry Award) is between \$4,169 and \$5,202 more expensive per ship, per day, than the International Transport Federation's Uniform Collective Agreement (ITFUCA) rate. Part B of the Seagoing Industry Award is estimated to be between \$2,980 and \$3,956 more expensive per ship, per day, than the ITFUCA rate. There are also additional administrative costs in applying Australian workplace laws.
12. Labour costs are a major contributing factor to the higher freight rates typically charged by operators of General Licence and Transitional General Licence ships. Stakeholders have provided examples demonstrating this. Combined with the higher costs of operating an ageing fleet, ship operators have consistently argued that the higher labour costs have impacted on the international competitiveness of Australian ships.

Administrative Issues Associated with the Act

13. The Act creates a range of administrative issues for shippers or shipping companies seeking to have cargo or passengers carried by coastal shipping where there is no General or Transitional General Licenced vessel available, and as a result a Temporary Licence is required.
14. *Minimum voyage number limitation:* Applicants may not apply for a Temporary Licence for a one-off single voyage; a minimum of five are required for a new Temporary Licence application. For cruise shipping, five voyages means five end to end journeys, not five stops on a single ticket. The same requirement applies to cargo, so that each end to end cargo movement conducted by the ship must be authorised by a Temporary Licence (or variation of that licence).

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15. Some stakeholders consulted indicated that this compliance burden reduces flexibility, and deters or even prevents the use of existing capacity on vessels to move coastal cargo. For those industry participants who have regular, scheduled shipments, this is not an issue. However, it can create a significant impediment for irregular or rare coastal shipping requirements. For example, if a company is seeking to transport an item on a one-off basis, such as moving oversized and/or heavy machinery, a Temporary Licence cannot be obtained for that task because this would constitute a single voyage. This particularly impacts on Australian businesses seeking to use spot hire (tramp traders), or other vessels under contracts of affreightment, at short notice for passengers or cargo. As opposed to liner shipping, tramp ships trade on the spot market with no fixed schedule or itinerary/ports-of-call(s). Therefore, unless the company can locate and negotiate with an existing General or Temporary Licence holder, the cargo may have to be transported by road. This latter option has potential cost implications for the shipper and additional safety, security and convenience implications for communities on the transportation route.
16. Court cases since the current regulatory framework has been in place have been critical of measures taken by shipping industry participants to avoid some of the challenges created by the current Act (see, for example, the decision of the Federal Court in *CSL v Minister & Braemar* (NSD1585/2013) [*Braemar's case*]). In that case the Federal Court found that the company used its Temporary Licence in a way that circumvented the purpose of the General Licence provisions and the object of the Act within the meaning of s.63(1).
17. *Vessels*: When an application for a Temporary Licence is prepared, as the Temporary Licence is not issued for a specific vessel, it is not required to specify a specific vessel in the application. However as a result of *Braemar's case* it is necessary for the Department to confirm the eligibility of applicants, and this frequently does require details of the vessels to be used to be available. This requirement is a burden upon all applicants as they must obtain and provide documentary evidence of their status in relation to vessels forecast to be used up to twelve (12) months into the future. Furthermore these documents are often difficult to source from overseas entities with direct ownership of the vessel. In the case of charterers, agreements to charter vessels are often not reached until a Temporary Licence has been obtained by the applicant to prove they can move the cargo or passengers.
18. Many companies, particularly those in the mining and manufacturing industries, do not own their own vessels, but instead arrange for transportation of their products as required through a variety of means, including: time chartering, contracts of affreightment and spot hire agreements. This means

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that these companies are limited in having to include a clause in these contracts that the vessels to be supplied must hold a current licence. The shipping companies supplying these transportation services must apply for their licences based on the work they anticipate they may receive over the twelve (12) month period.

19. *Classes of person eligible to apply:* In *Braemar's* case, the Federal Court also considered who could apply for a Temporary Licence under s.28 of the Act, and the circumstances in which a person could apply for a variation of a Temporary Licence under Subdivisions C and D of Division 2 of Part 4 of the Act. As a result of the Court's findings, the Department has introduced new procedures to verify the applicant's status as an owner, master, agent, charterer or shipper. The verification process, and requests for additional supporting evidence, between the Department and the applicants involves significant costs and delays for applicants.
20. *Consultations on Temporary Licence applications:* The current licencing system involves in-built delays even when there are no Australian licensed ships that are suitable to carry the cargo, or available to transport the passengers (for example there are no Australian licensed container ships, bulk carrier or chemical tankers).
21. Information about all new or variations to Temporary Licence applications is provided by the Department to General Licence holders, Transitional General Licence holders and other interested parties. This consultation period allows General Licence holders to provide a Notice in Response that a General Licensed vessel is available to conduct any of the notified voyages (cargo/passenger). This triggers a mandatory consultation process between the applicant and the General Licence holder that may be arbitrated by the Department.
22. This process does not automatically ensure cargo will be carried by Australian licensed operators. The Minister (or their delegate) must apply the criteria specified in s.34(1)-(3) of the Act. Where the application is refused, this refusal may potentially create further delays to the client, and/or in providing the service, if, for example, the General Licence holder is in fact unable to carry the cargo/passengers.
23. *Licence variations:* The business and logistics uncertainties associated with commercial operations of the industries that use coastal shipping mean that plans by shippers very frequently change, for reasons that range from factors driving the production decisions of raw material suppliers to uncertainties associated with consumer demand. Temporary Licence applicants must nominate voyages in advance for approval, and therefore frequently need to seek variations to the authorised

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cargo types or volumes carried, the loading and discharge ports, and/or the dates voyages are to be undertaken. Temporary Licences can be varied after they are issued, to either add additional voyages (a minimum of one new voyage per application) or to amend the details of already authorised voyages (for example to vary loading dates or the number of passengers to be carried). There are various situations where a variation to a Temporary Licence would be necessary. For example, one by-product of the zinc smelting operations in Hobart, Tasmania is sulphuric acid. Once the acid storage tanks in Hobart are full, or otherwise when the sister operation in Port Pirie, South Australia, requires additional sulphuric acid for its lead smelting operations, the acid must be transported by specialised tankers. It is not possible for the shipping company to foresee the exact volume or dates that the smelting operators will require the acid to be shipped interstate.

24. Once the updated information is known, the Temporary Licence holder is required to lodge an application for a variation at any time before two business days of sailing. An application to vary authorised voyages costs a further \$200 per application, and applications to vary Temporary Licences to include new matters cost an additional \$400 per application. The requirements of the Act impose additional regulatory burdens on businesses that use shipping without any clear benefits for Australian licenced shipping.
25. To be permitted under Subdivision C of the Act, the authorised matters variation sought must bear: “a reasonable relationship to the detail of the matters specified in [the] Temporary Licence so that it [falls] within the scope of the earlier detailed public process that had resulted in the grant of the licence under s.37.”¹ The judgment in *Braemar’s* case referred to above specified that the Department must make a decision in granting a variation by considering whether the variation is: “sufficiently significant that it would adversely affect the interests of a General Licence holder”.² The Federal Court judgement provides no additional guidance on the appropriate administrative processes. To fully remove the uncertainty associated with the authorised matters process, applicants can apply under Subdivision D to add an entirely new voyage instead of amending an existing voyage, for which a longer legislated timeline (two business days as compared with 24 hours) is required. However such a course may create additional uncertainties and costs for Temporary Licence holders and shippers.
26. Delays in the current licensing system are costly for shippers, and may result in shippers incurring demurrage fees. Demurrage is a cost payable to a chartered ship owner where there is a failure to load or discharge the ship within the time agreed. Based on stakeholder feedback, demurrage is

¹ *CSL v Minister & Braemar* (NSD1585/2013) paragraph 97

² *CSL v Minister & Braemar* (NSD1585/2013) paragraph 95

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conservatively estimated to cost \$12,000 per day on average. Shippers may also incur additional berthing fees for the period the vessel is docked, particularly if other vessels are waiting to use that berth.

2. Recent Policy Development Processes and Consultation

27. The Act (and the amendments to the *Shipping Registration Act 1981*) has been in operation since 1 July 2012. A consultation and review process was commenced in 2014, with the publication of a discussion paper “*Options Paper: Approaches to regulating coastal shipping in Australia*”. Submissions were received from 87 interested parties including major Australian and foreign shipping companies, Australian industry reliant on shipping services, and from industry and employee representative groups.
28. Supporting the options paper process, the Department of Infrastructure and Regional Development met with 103 stakeholder organisations nationally through a series of open and private consultation sessions. The consultative process was publicised broadly through emails to industry and information on the Department’s webpage. Advertisements were also published in the *Lloyd’s List DCN*, *The Australian Financial Review* and *The Australian* newspapers regarding the consultation process.
29. To establish the likely economic benefits or costs of each option, the Department commissioned independent research and an online data collection exercise. This work provided an independently verified net present value for each proposed option and the results are reflected in the Regulation Impact Statement (RIS) that was attached to the Bill’s Explanatory Memorandum.
30. Consultation was also undertaken to determine the regulatory burden imposed by the current system. For this purpose, businesses regulated under the current coastal trading regime were asked to respond to an online questionnaire. The information provided during this process assisted in the refinement of policy options and in establishing the regulatory burden of the existing system and of the options considered. An industry roundtable was conducted on 2 February 2015. Following the industry roundtable, the Department received an additional nineteen submissions from industry members.
31. On 31 March 2015, the Government released the Final Report of the Competition Policy Review (the Harper Review). One recommendation of this review related to coastal shipping. The Harper

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review recommended that: “the cabotage restrictions on coastal shipping should be removed, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the government policy can only be achieved by restricting competition.”

32. The Productivity Commission's Inquiry Report into Tasmanian Freight and Shipping released on 24 June 2014 also contained recommendations relating to coastal shipping. The Productivity Commission found that Tasmanian Freight Equalisation Scheme, the Tasmanian Wheat Freight Scheme and the Bass Strait Passenger Vehicle Equalisation Scheme are not the best way to advance Tasmania's economic development. Instead the Report recommended that the coastal shipping regulation (including cabotage) be progressed as a matter of priority to achieve the most efficient coastal shipping services feasible for Australia.

33. As set out in the RIS, the Department compared four options, including a non-regulatory option, to the regulatory settings for coastal shipping in Australia. This included a detailed cost-benefit analysis and modelling for all four options. The RIS concludes the option of replacing the licensing arrangements with a new permit system, with added protections for Australian and foreign crew as the preferred option. The options, detailed in the RIS, were to:

1. Remove all regulation relating to access to coastal trading;
2. Remove all regulation relating to access to coastal trading, and to enact legislation to deal with the effects of other Australian laws;
3. Continue to regulate coastal trade, but minimise industry burden and cost; and
4. Reduce the regulatory burden while including provisions to retain skills and provide minimum protections for seafarers on foreign vessels engaged predominantly in coastal shipping.

34. Of the options outlined, the RIS concludes by identifying Option 4 as the preferred option.

Modelling agreed by the Office of Best Practice Regulation (OBPR) contends that this option will have a net economic benefit of \$667.4 million. In addition, the annual regulatory saving estimated using the Regulatory Burden Measurement framework and agreed by the OBPR is estimated to be \$21.4 million. While this option will not deliver the greatest economic benefit of the options that have been identified, the minimum protections for foreign seafarers and Australian seafarer skills contained within the option are considered to be fundamental parameters of a reformed coastal shipping regulatory framework. The estimated economic benefit of approximately \$667.4 million

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over a 20 year period was made on the basis of a commencement date of 1 July 2015.³ The calculation of economic benefits is on the basis of changes in the costs incurred by shipping companies. The RIS includes an analysis of the changes in trades and vessel choices flowing from commercial decisions resulting from these cost changes. It does not attempt to identify specific job impacts.

3. Changes that would Flow from the Bill

Single Permit System:

35. Under the provisions contained in the Bill, the existing licensing system would be replaced by a single permit system for all ships, Australian and foreign. The Permit would replace General Licences, Temporary Licences and Emergency Licences issued under the current system. The new Permit will allow Australian and foreign ships to carry domestic goods and passengers on an unrestricted basis during the twelve (12) months of the Permit. Australian and foreign vessels would have equal status. The coverage of the Act would be expanded to include offshore facilities, allowing the carriage of petroleum products from offshore installations in Australian territory to the mainland.
36. To support an Australian skills base, foreign ships trading on the coast for more than 183 days in a one year Permit period would be required to have crew that are Australian citizens or residents (or otherwise holding appropriate Australian work rights) specifically the master or chief mate and the chief engineer or first engineer of the ship. In addition, these ships would also have minimum standards for crew pay and conditions set out in an award set by the Fair Work Commission (see [40]-[41]).

Customs Importation:

37. Foreign vessels operating under a Permit will not be imported into Australia for the purposes of the *Customs Act 1901*. This will create a range of taxation, customs and visa requirement benefits, including when carrying out scheduled maintenance in dry docking facilities.

³ This net present value has been calculated using a 7 per cent discount rate as per the Office of Best Practice Regulation's Guidance Note on Cost-Benefit Analysis.

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Reporting:

38. Under the new arrangements, Permit holders will only need to report on voyages after the event. Permit holders will report on activities twice annually, with provision for an interim report to be requested in some circumstances: after six months, and then at the end of the Permit period.

Application of Australian Workplace Relations Laws:

39. The regulatory framework contained in the Bill removes the requirement for ships to apply for single voyages. Accordingly, the current coverage provisions of the *Fair Work Regulations 2009* (Fair Work Regulations) need to be updated to account for the new single Permit. To ensure that the *Fair Work Act 2009* (Fair Work Act) operates in relation to foreign ships engaged in the coastal trade in a manner that takes account of changes proposed by the Bill, amendments will be made to the Fair Work Regulations.
40. The Bill ensures that seafarers working predominantly in Australian waters (defined as the territorial sea, exclusive economic zone or waters above the continental shelf) are covered by Australian domestic workplace relations laws and the Australian wages and conditions that presently apply to foreign seafarers continue. Under the reforms, operators of foreign ships that engage in more than 183 days of coastal trading in a permit year will be required to pay the Australian wages currently set out in Part B of the Seagoing Industry Award. Part A will remain for Australian ships on the Australian General Shipping Register. Part A and Part B of the Award are set by the Fair Work Commission. The proposed amendments do not alter this. Setting Part A and Part B terms and conditions will remain the responsibility of the Fair Work Commission.
41. The coverage provisions of Part B of the Seagoing Industry Award contain an explicit reference to Temporary Licences issued under the Act. To ensure that the application of Part B continues in moving to the new permit system, the Bill deems Part B of the Seagoing Industry Award to set the wages and conditions for foreign flagged ships engaged in Australian coastal trading under a permit when covered by the Fair Work Act.
42. In order to ensure the Fair Work Act operates effectively, including allowing employees to exercise their rights under the Fair Work Act, there needs to be clarity from the start of the permit period as to whether the ship is covered. Therefore, ship operators will be required to declare in their permit

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application whether they intend to engage in coastal trade for more than 183 days in the permit period. Such a declaration will act as the trigger under amendments to the Fair Work Regulations for the Fair Work Act to apply to the ship and the seafarers engaged on it for the whole of the permit period.

43. In the event that a foreign ship did not declare that it intended to trade for more than 183 days, but it does in fact, the Fair Work Act will apply automatically to the ship as soon as it reaches the threshold number of days. In this case the seafarers would not have been covered by the Fair Work Act for the first 183 days but would be covered prospectively from day 184 onwards. Additionally, the employer will be required to pay back employees any difference between what they would have been paid under Part B and what they were in fact paid in the first 183 days (if Part B is higher). This back pay is described in the Bill as a 'parity payment'. Failure to make parity payments could result in civil penalties and cancellation of the Permit. This restitution must also be made to the seafarer before any future Permit application can be granted.
44. If a ship is not engaged predominantly in Australian coastal trading, that ship can continue its existing international arrangements. The Fair Work Act and Part A of the Seagoing Industry Award will continue to apply to ships on the Australian General Shipping Register. Foreign ships engaged in coastal trading for 183 days or less in a permit period (and which has not declared that it intends to engage for more than 183 days) will continue to operate under their existing international contractual arrangements.
45. The creation of Part B by the Australian Industrial Relations Commission during the award modernisation process recognised that special arrangements are appropriate for certain foreign ships that are in Australian waters. Part A specifies wages and conditions higher than those in Part B, which is itself generally higher than comparable international rates. Applying Part B to foreign ships that engage in more than 183 days recognises that foreign ships engaged predominantly in domestic trade should be subject to domestic workplace relations arrangements.

Workers' Compensation and Workplace Health and Safety

46. The Seacare scheme is a national workers' compensation and work health and safety scheme which applies to a defined part of the Australian maritime industry. Workers' compensation and work health and safety arrangements for the scheme are set out in the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) and *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act), respectively. Ships with a Permit that are prescribed ships for the purpose of the Seafarers Act and the OHS(MI) Act (which includes Australian ships and foreign

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ships with a majority Australian crew that are operated by a person or company with a sufficient connection to Australia) will continue to be covered by the Seafarers Act and the OHS(MI) Act.

47. The Government is currently giving consideration to broad reforms of the Seacare scheme, including the coverage of the Seafarers Act and OHS(MI) Act, following the review of the scheme completed by Mr Robin Stewart-Crompton in March 2013. The Bill makes only consequential amendments to the coverage of the Seafarers Act and OHS(MI) Act to preserve their existing coverage of ships engaged in coastal shipping. Coverage of the Seafarers Act and OHS(MI) Act will be more comprehensively considered as part of the Government's broad reform of the Seacare scheme.

The Australian International Shipping Register (AISR):

48. Changes to the *Shipping Registration Act 1981* (Shipping Registration Act) are proposed to make entry to the AISR easier and reduce the barriers to ships on this register. To date, there have never been any Australian ships listed on the AISR. The amendments to the AISR are intended to make it more attractive for Australian vessels to be placed on the international register, and to operate coastal shipping services while on the register.
49. The proposed amendments involve changes to the AISR to:
- (a) remove the requirement for a collective agreement between the owner of a vessel and the Seafarers' Bargaining Unit;
 - (b) the requirement for a vessel to be predominantly engaged in international trading. This is defined as a minimum of 90 days in international waters; and
 - (c) expand the scope of those who hold senior crew positions on AISR ships to include people who have Australian work rights without necessarily being Australian residents or nationals by inserting the words “, or a person who holds a visa that allows the person to work in Australia as a master or chief mate (as the case requires),” after the words “Australian resident”.
50. While AISR ships will no longer be required to agree to a collective agreement as a condition of registration, the ability to make a collective agreement remains. As Temporary Licences will no longer exist, AISR ships engaged in coastal trading will operate under the new Permit system. The Bill also deems Part B of the Seagoing Industry Award to apply to AISR ships for the entire time the ship is in Australian waters (other than when engaged in international voyages). Consistent

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with existing arrangements, AISR ships will continue to be excluded from the Seafarers Act but will potentially be covered by the OHS(MI) Act.

Transitional Arrangements:

51. To ensure a smooth transition from the current system to the new system, and the Department will be consulting with stakeholders on the lead-time necessary for the new arrangements. All existing licences will remain valid until the time at which the new legislation commences, as will all legislative requirements, subject to certain modifications. A commencement date will be set in line with industry preferences and Government priorities, with a view to implementation as soon as practicable after the legislation passes the Parliament. The Department anticipates there will be a direct switch over between the two systems. During the transitional period, shipping operators will be able to apply for Permits under the new system, but the Permits won't take effect until the announced commencement date.
52. To ensure that the Fair Work Act operates in relation to foreign ships engaged in coastal trading in a manner that takes account of changes proposed by the Bill, amendments will be made to the Fair Work Regulations. These will be made after the passage of the Bill. The Department of Employment will provide these amendments to the Senate inquiry in due course.

Operation of the Transitional Provisions:

53. Part 1 of Schedule 1 of the Bill, consisting of the main amendments to the current Act, will commence on a single day to be fixed by Proclamation or after 6 months after the day the Act receives royal assent. Part 2 of Schedule 1 of the Bill, consisting of amendments pertaining mostly to civil penalty provisions, will also commence on a single day to be fixed by Proclamation or after 6 months from when the Act receives royal assent. The transition period will operate between these commencement dates. In other words, the period is defined as from when Part 1 commences until immediately before the commencement of Part 2.
54. During the transition period, Part 4 of the current Act, and other provisions of the previous law necessary for Part 4 to effectively operate, will continue to be in force subject to some modifications. Part 4 of the Act governs the current tiered licensing system, including requirements for licence applications, conditions imposed on licence holders and how certain licences can be varied. This means that existing licences and their associated obligations will remain valid during

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the transition period, subject to certain modifications. Licences can also be applied for and varied during this period.

55. The modifications set out in Part 4 of the Bill mean that the ability of a General Licence holder, a Transitional General Licence holder, or an interested party, to provide comment on Temporary Licence applications or variations will be removed. This effectively means that the issues pertaining to submitting an application for a Temporary Licence variation following the findings of *Braemar's* case will no longer be relevant.
56. Requirements outlining who is eligible to apply for a licence will also be modified during the transition period; a person will be able to apply for a licence to enable a vessel to be used in coastal trading without having to belong to one of the categories of owner, charterer, master or agent of a vessel or a shipper.
57. The transitional provisions also set out the reporting obligations under the current regime that will continue to be in force for licences granted before the end of the transition period. Any Permits granted during the transition period come into effect the day after the end of the transition period.

4. Other Matters

Maritime Labour Convention

58. Australia is a signatory to the Maritime Labour Convention 2006 (MLC), which came into force in August 2013. To date, sixty-four International Labour Organization Member States representing more than 80 per cent of the world's global shipping tonnage have ratified the Convention. The MLC provides an international safety net of standards regulating seafarer employment relationships for the world's 1.5 million seafarers and creates a level playing field for shipowners and operators.
59. The regulations and guidelines of the MLC set out the minimum standards for employment, accommodation, health protection, medical care, welfare and social security protection of seafarers. They clearly define the role of flag States that register ships in ensuring that adequate security exists to mitigate against the financial, legal and human cost of abandonment, and death and long-term disability due to occupational hazards. The Australian Maritime Safety Authority (AMSA) is responsible for enforcing the MLC in Australia.

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Application of maritime safety and environmental laws

60. The provisions of the Bill will not affect Australia's current maritime safety and environmental laws or the enforcement of those laws. The Australian Maritime Safety Authority (AMSA) is empowered to perform an enforcement function for maritime trade through the implementation of flag State and port State control regimes covering both Australian and foreign flagged ships. In so doing AMSA has the power to detain a ship if required, and can direct a ship to leave an Australian port.
61. The Committee is currently undertaking a separate Inquiry into *the increasing use of so- called Flag of Convenience shipping in Australia*. That Inquiry is investigating maritime safety and environmental issues associated with foreign registered ships. The Department expects to make a separate submission to the Committee on those issues.

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Attachment A

The Current Legislative Framework for Coastal Shipping

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act) created a three-tier licensing system for coastal trading: General Licences; Temporary Licences; and Emergency Licences. A fourth category, Transitional General Licences, is (as the name suggests) a transitional mechanism from the previous provisions of Part VI of the *Navigation Act 1912* (Navigation Act). The Act's definition of "coastal trading" applies to ships engaged in voyages of a commercial nature carrying passengers or cargo, and covers voyages between:

- a port in one state (or territory) and a port in another state (or territory);
- two or more ports in the same state (or territory), followed by trips to one or more states (or territories).
- a port in one state (or territory) and a port in the same state (or territory) where the vessel falls under the scope of the Act due to a declaration made by the Minister.

The Act provides that a vessel is not engaged in coastal trading if it carries:

- passengers who hold a through ticket to or from a port outside Australia, and they disembark at a port in Australia for transit purposes only; or
- cargo that is consigned on a through bill of lading to or from a port outside Australia and is unloaded at a port in Australia for transshipment only.

In relation to passengers, large cruise liners are outside the coverage of the Act's regulatory framework as a result of a Ministerial exemption granted under s.11 ([Attachment C](#)). "Large" cruise liners are defined as those vessels in excess of 5000 gross tonnes which are:

- (a) capable of a speed of at least 15 knots;
- (b) capable of carrying at least 100 passengers; and
- (c) utilised wholly or primarily for the carriage of passengers between any ports in the Commonwealth or in the Territories, except between Victoria and Tasmania.

General Licences: Australian companies are permitted to apply for a General Licence for any of their Australian registered ships engaged in "coastal trading". A General Licence is valid for five years and costs \$110. To be eligible to apply for a General Licence, the vessel must be registered in the Australian General Shipping Register, and the applicant must provide evidence to the Department that they are a person who is: the owner, charterer, master or agent of the vessel. The applicant must also provide a statement that each seafarer working on the vessel is (or will be) an Australian citizen, a permanent visa holder, or otherwise that their temporary visa does not prevent them from working on the vessel.

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Transitional arrangements for owners of foreign vessels which held a licence issued under Part VI of the Navigation Act at 30 June 2012 were provided for through a Transitional General Licence. Transitional General Licences have continued to be recognised through the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012*, however, applications for this licence type were only accepted during the first four months of the operation of the Act. Attachment B sets out the number and name of vessels currently holding Transitional General Licences and General Licences as at 20 July 2015.

Temporary Licences: Foreign shipping companies wishing to engage in coastal trading are eligible to apply for a Temporary Licence, which must be renewed annually and costs \$400. Applications for new Temporary Licences must include details of a minimum of five individual voyages to be conducted over the twelve (12) month period. Temporary Licences allow the nominated voyages to be undertaken by different ships. Applicants are also required to specify the expected loading dates; the number of passengers expected to be carried (if any); the kinds and volume of cargo expected to be carried (if any); the type and size, or type and capacity, of the vessel to be used to carry the passengers or cargo (if known); the name of the vessel (if known); the ports at which the passengers or cargo are expected to be taken on board; and the ports at which the passengers are expected to disembark or the cargo is expected to be unloaded. Temporary Licences can be varied after they are issued, to either add additional voyages or to amend the details of already authorised voyages (for example to vary departure dates or the number of passengers to be carried). Information on Temporary Licence applications is provided by the Department to all General Licence holders and allows them to provide notice that a General Licensed vessel is available to conduct any of the notified voyages.

Emergency Licences: The Act allows for a third type of licence, intended to be available in defined emergency situations. Such licences may be issued for a thirty day period and cost \$400. These Licences are effectively another form of Temporary Licence in that they only relate to providing support following natural disasters and therefore are not used in the normal course of business. “Emergency” is defined narrowly under the *Coastal Trading (Revitalising Australian Shipping) Regulation 2012*. To date, no Emergency Licences have been applied for or issued.

Application of the *Fair Work Act 2009*:

The current regulatory framework for coastal trading under the *Fair Work Act 2009* (Fair Work Act) allows foreign ships in certain circumstances to engage in Australian coastal trading while continuing to apply foreign workplace arrangements on the ship. At other times, these foreign ships apply Fair Work arrangements while engaging in coastal trade. The current framework already includes wages and conditions under the Fair Work system, with provisions which are specifically developed for

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seafarers on foreign ships who regularly engage in Australian coastal trading and move in and out of the Australian jurisdiction.

The current arrangements, set out in the *Fair Work Regulations 2009* (Fair Work Regulations) and the Seagoing Industry Award 2010 (the Seagoing Industry Award), operate by reference to the multiple licence types under the Act. For foreign ships operating under Temporary Licences, the application of the Fair Work Act is linked to the number of voyages the ship has undertaken in any twelve (12) month period.

In 2010, the Fair Work Regulations extended Australian workplace relations law coverage in the maritime industry to ship licencing and permit arrangements under the Navigation Act. The Fair Work Regulations were amended in 2012 to reflect the change from a permit system to the licence system implemented by the Act. Accordingly, the Fair Work Act currently applies to crew on ships (both Australian and foreign flagged) engaged in coastal trading if the ships are in Australian waters and are operating under a:

- i. General, Transitional General or Emergency Licence under the Act; or
- ii. Temporary Licence and have made at least two other voyages under a Temporary Licence in the last twelve (12) months.

The Seagoing Industry Award applies to employers and employees in the maritime industry. The Seagoing Industry Award sets out additional minimum conditions of employment, including wage rates, hours of work and allowances. Part A of the Seagoing Industry Award applies to all ships except those granted a Temporary Licence. Part B of the Seagoing Industry Award applies to ships operating under a Temporary Licence, that is, certain foreign ships and Australian International Shipping Register (AISR) ships.

Application of the Seafarers Rehabilitation and Compensation Act 1992 and Occupational Health and Safety (Maritime Industry) Act 1993

The *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) and the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) specifically apply to ships that are used to engage in coastal trading under a General Licence or an Emergency Licence (if the ship is registered on the AISR). These ships include Australian ships and some foreign ships that engage in coastal trading under a transitional General Licence. The OHS(MI) Act also specifically applies to AISR ships that are engaged in coastal trading under a Temporary Licence or an Emergency Licence.

The coverage provisions of the Seafarers Act and OHS(MI) Act also capture foreign ships engaged in coastal trading if they have a majority Australian crew and are operated by a person, firm or company

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with a sufficient connection to Australia (defined in the Navigation Act s.10(c)), and the ship is engaged in interstate or international trade or commerce (or trade within or between the Territories).

Administration of the Shipping Registration Act 1981

The *Shipping Registration Act 1981* (Shipping Registration Act) came into effect in 1982, and allowed Australia to create its own regime for the registration of ships. The AISR was established in 2012 with the aim of being a competitive alternative to other international ship registers. The Shipping Registration Act outlines the requirements for ships that may be registered on the AISR and the conditions that they must fulfil to maintain their registration. In particular, the Shipping Registration Act stipulates that a vessel registered on the AISR must:

- (a) be predominantly used to engage in international trading;
- (b) have a collective agreement in place between the owner of the ship and the seafarers' bargaining unit; and
- (c) have an Australian national or resident as the master or chief mate of the ship and as the chief engineer or first engineer of the ship.

The AISR has been in place since 1 July 2012, but as of August 2015 no ships are entered on the register. The current framework requires AISR ships to apply Part B of the Seagoing Industry Award when engaged in coastal trade under a Temporary Licence, and removes Fair Work Act coverage when they are engaged in international trade.

The Fair Work Act does not apply to ships registered on the AISR while engaged in international trade. To undertake a domestic voyage, a ship registered on the AISR must operate under a Temporary Licence and therefore is subject to Part B of the Seagoing Industry Award from the third and subsequent voyages conducted in a 12 month period.

Under current arrangements under the Shipping Registration Act (as amended by the *Shipping Registration Amendment (Australian International Shipping Register) Act 2012*), Australian ships registered on the AISR are excluded from Australian workers' compensation arrangements set out in the Seafarers Act. These seafarers may however be covered by Australian work health and safety arrangements set out in the OHS(MI) Act. The exclusion applies when the ship is engaged in coastal trading; regardless of the crew composition of the ship (noting that no ships have been registered on the AISR).

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Attachment B

General Licences:

Licence Number	Organisation	Operating Name	Vessel Name	Issue Date	Expiry Date	Licence Status	Vessel Type
0050GL002	ASP Ship Management	ASP Ship Management	Portland	1/11/12	31/10/17	Issued	General Cargo
0043GL001	Coral Princess Cruises (NQ) Pty Ltd	Coral Princess Cruises	Coral Princess	17/09/12	16/09/17	Issued	Passengers Ship
0043GL002	Coral Princess Cruises (NQ) Pty Ltd	Coral Princess Cruises	Oceanic Discoverer	17/09/12	16/09/17	Issued	Passengers Ship
0010GL0001	CSL Australia Pty Ltd	CSL Australia Pty Ltd	CSL Thevenard	13/07/12	12/07/17	Issued	Bulk Carrier
0010GL005	CSL Australia Pty Ltd	CSL Australia Pty Ltd	CSL Whyalla	13/11/12	12/11/17	Issued	Self Unloading Bulk Carrier
0010GL0002	CSL Australia Pty Ltd	CSL Australia Pty Ltd	Goliath	13/07/12	12/07/17	Issued	Cement Bulk Carrier
0010GL0003	CSL Australia Pty Ltd	CSL Australia Pty Ltd	Iron Chieftain	13/07/12	12/07/17	Issued	Bulk Carrier
0053GL001	Furneaux Freight Pty Ltd	Furneaux Freight Pty Ltd	Matthew Flinders III	8/11/12	7/11/17	Issued	Ro-ro/Passanger Ship
0019GL0001	Inco Ships Pty Ltd	Inco Ships	Accolade II	1/08/12	31/07/17	Issued	Limestone Carrier
0052GL001	L.D. Shipping Pty Ltd	L.D. Shipping Pty Ltd	Statesman	1/11/12	31/10/17	Issued	Landing Craft
0108GL295	M A R C Pty Ltd	Master Fisheries	Lady M	17/02/15	16/02/20	Issued	Charter
0017GL001	North Star Cruises	North Star Cruises	True North	1/11/12	31/10/17	Issued	Passengers Ship
0107GL297	Odyssey Vessel Management Pty Ltd	Kimberley Expeditions	MV REEF PRINCE	25/02/15	24/02/20	Issued	Power Catamaran
0049GL001	P&O Maritime Services Pty Ltd	P&O Maritime	Aurora Australis	1/11/12	31/10/17	Issued	Research/Survey Vessel
0045GL331	Perkins Shipping Pty Ltd	Toll Marine Logistics	Toll Investigator	26/06/15	25/06/20	Issued	Landing craft
0045GL002	Perkins Shipping Pty Ltd	Toll Marine Logistics	Coral Bay	12/10/12	11/10/17	Issued	Landing Craft
0045GL003	Perkins Shipping Pty Ltd	Toll Marine Logistics	Fourcroy	12/10/12	11/10/17	Issued	Landing Craft
0045GL005	Perkins Shipping Pty Ltd	Toll Marine Logistics	Toll Dragon Fly	12/10/12	11/10/17	Issued	Landing Craft
0045GL006	Perkins Shipping Pty Ltd	Toll Marine Logistics	Toll Firefly	12/10/12	11/10/17	Issued	Landing Craft
0045GL007	Perkins Shipping Pty Ltd	Toll Marine Logistics	Toll Kestrel	22/11/12	21/11/17	Issued	Landing Craft
0045GL008	Perkins Shipping Pty Ltd	Toll Marine Logistics	Toll Osprey	6/02/13	5/02/18	Issued	Landing Craft
0045GL213	Perkins Shipping Pty Ltd	Toll Marine Logistics	Toll Sandfly	18/06/14	17/06/19	Issued	Landing Craft
0045GL009	Perkins Shipping Pty Ltd	Toll Marine Logistics	Toll Territorian	18/06/13	17/06/18	Issued	Landing Craft
0045GL001	Perkins Shipping Pty Ltd	Toll Marine Logistics	Warrender	12/10/12	11/10/17	Issued	General Cargo
0075GL002	Sea Swift (NT) Pty Ltd	Sea Swift (NT) Pty Ltd	Tiwi Islander	9/08/13	8/08/18	Issued	Landing Craft
0074GL007	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Carcinos	7/08/13	6/08/18	Issued	Barge
0074GL003	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Chrysus	7/08/13	6/08/18	Issued	Barge
0074GL004	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Colossus	7/08/13	6/08/18	Issued	Barge
0074GL006	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Comal III	7/08/13	6/08/18	Issued	Barge
0074GL008	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Cronus	7/08/13	6/08/18	Issued	Barge
0074GL009	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Endeavour Bay	7/08/13	6/08/18	Issued	Supply Vessel
0074GL010	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Kestrel Bay	7/08/13	6/08/18	Issued	General Cargo
0074GL001	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Malu Chief	7/08/13	6/08/18	Issued	Landing Craft
0074GL011	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Malu Explorer	7/08/13	6/08/18	Issued	Landing Craft
0074GL012	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Malu Titan	7/08/13	6/08/18	Issued	Landing Barge (Utility)
0074GL013	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Malu Trader	7/08/13	6/08/18	Issued	Landing Barge (Roro)
0074GL014	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Malu Trojan	7/08/13	6/08/18	Issued	Landing Craft
0074GL015	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Malu Warrior	7/08/13	6/08/18	Issued	Landing Craft
0074GL002	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Newcastle Bay	7/08/13	6/08/18	Issued	Container (General Cargo)
0074GL018	Sea Swift Pty Ltd	Sea Swift Pty Ltd	SSB 1802	22/08/13	21/08/18	Issued	Barge
0074GL019	Sea Swift Pty Ltd	Sea Swift Pty Ltd	SSB 1803	7/08/13	6/08/18	Issued	Barge
0074GL017	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Trinity Bay	7/08/13	6/08/18	Issued	PAX/ General Cargo
0074GL016	Sea Swift Pty Ltd	Sea Swift Pty Ltd	Wadjemup	7/08/13	6/08/18	Issued	Landing Craft
0007GL001	SeaRoad Shipping Pty Ltd	SeaRoad Shipping Pty Ltd	Searoad Mersey	10/10/12	9/10/17	Issued	Ro-ro Cargo
0007GL002	SeaRoad Shipping Pty Ltd	SeaRoad Shipping Pty Ltd	Searoad Tamar	10/10/12	9/10/17	Issued	Ro-ro Cargo
0042GL001	Toll Transport Pty Ltd	Toll Shipping	Tasmanian Achiever	29/08/12	28/08/17	Issued	Ro-ro Cargo

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0042GL002	Toll Transport Pty Ltd	Toll Shipping	Victorian Reliance	29/08/12	28/08/17	Issued	Ro-ro Cargo
0048GL001	TT Line Company Pty Ltd	TT-Line Company Pty Ltd	Spirit of Tasmania I	1/11/12	31/10/17	Issued	Ro-ro/Passenger Ship
0048GL002	TT Line Company Pty Ltd	TT-Line Company Pty Ltd	Spirit of Tasmania II	1/11/12	31/10/17	Issued	Ro-ro/Passanger Ship

Transitional General Licences:

Licence Number	Licence Holder	Operating Name	Vessel Name	Issue Date	Expiry Date	Licence Status	Vessel Type
0006TGL002	BP Australia Pty Ltd	BP Australia Pty Ltd	British Fidelity	21/09/12	20/09/17	Issued	Crude Oil Tanker
0006TGL001	BP Australia Pty Ltd	BP Australia Pty Ltd	British Loyalty	21/09/12	20/09/17	Issued	Crude Oil Tanker
0010TGL001	CSL Australia Pty Ltd	CSL Australia Pty Ltd	CSL Brisbane	15/08/12	14/08/17	Issued	Bulk Carrier
0010TGL002	CSL Australia Pty Ltd	CSL Australia Pty Ltd	CSL Melbourne	8/08/12	7/08/17	Issued	Bulk Carrier
0022TGL001	Teekay Shipping (Australia) Pty Ltd	Teekay Shipping (Australia) Pty Ltd	Alexander Spirit	8/08/12	7/08/17	Issued	Chemical/Oil Products Tanker
0022TGL003	Teekay Shipping (Australia) Pty Ltd	Teekay Shipping (Australia) Pty Ltd	Lowlands Brilliance	8/08/12	7/08/17	Issued	Bulk Carrier
0022TGL005	Teekay Shipping (Australia) Pty Ltd	Teekay Shipping (Australia) Pty Ltd	Mariloula	8/08/12	7/08/17	Issued	Bulk Carrier
0042TGL001	Toll Transport Pty Ltd	Toll Shipping	Toll Hobart	29/08/12	28/08/17	Issued	Barge

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Attachment C



Australian Government

Coastal Trading (Revitalising Australian Shipping) Act 2012

Section 11 exemption for cruise vessels

I, ANTHONY NORMAN ALBANESE, Minister for Infrastructure and Transport, for purposes of section 11 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012*, having taken into account all relevant considerations, hereby direct that the *Coastal Trading (Revitalising Australian Shipping) Act 2012* does not apply to all cruise vessels in excess of 5000 gross tonnes.

Specifications of vessels to which the exemption applies and conditions on which the exemption is given

This exemption applies to vessels in excess of 5000 gross tonnes which are:

- (a) capable of a speed of at least 15 knots;
- (b) capable of carrying at least 100 passengers; and
- (c) utilised wholly or primarily for the carriage of passengers between any ports in the Commonwealth or in the Territories, except between Victoria and Tasmania.

This exemption has effect for the period commencing from 1 January 2013 and ceasing on 31 December 2017.

ANTHONY ALBANESE
Minister for Infrastructure and Transport

Dated 5 December 2012

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