Senate Inquiry into Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017

Submission of the Maritime Union of Australia

Submitted to:

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1. Overview

1.1. This submission responds to the Senate's referral of the *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017* ("**the Bill**") on 19 October 2017, to the Rural and Regional Affairs and Transport Legislation Committee ("**the Committee**"). This submission firstly provides a brief introduction about the Maritime Union of Australia ("**MUA**") and then outlines the MUA's views and recommendations in response to the Bill.

1.2. The MUA represents some 13,000 Australian seafarers, stevedores, and other maritime workers, equating to more than 90% of Australia's maritime workforce. Our seafaring membership work in the domestic shipping trade, offshore oil and gas industry, and on voyages outside of Australian waters. The MUA is an affiliate of the 4.5 million member International Transport Workers' Federation. The MUA was formed in 1993 with merger of the Seamen's Union of Australia and the Waterside Workers Federation of Australia, which trace their formation to 1906 and 1872 respectively.

1.3. For the purpose of this submission, the "maritime industry" refers to traditional seafaring work and associated support roles in the Australian domestic coastal shipping and offshore oil and gas industries. In addition, the term "cabotage" refers to the transportation of goods or passengers between two points, in the same country.[1]

2. Current state of Australian shipping

2.1. The Senate Inquiry into the Increasing use of So-called Flag of Convenience Shipping in Australia came to some strong conclusions regarding the large and escalating role that international and Flag of Convenience ("**FOC**") shipping is playing in the transport of Australian domestic cargos. The Committees' report concluded that:

> *The committee maintains that* [FOC] *vessels present serious security risks to the Australian coast, which need to be properly addressed.*
>
> …
>
> *The committee takes the view that, by not agreeing to review the current state of the maritime sector in Australia, the government is failing to address the serious security, economic, human rights and environmental vulnerabilities in the sector.*[2]

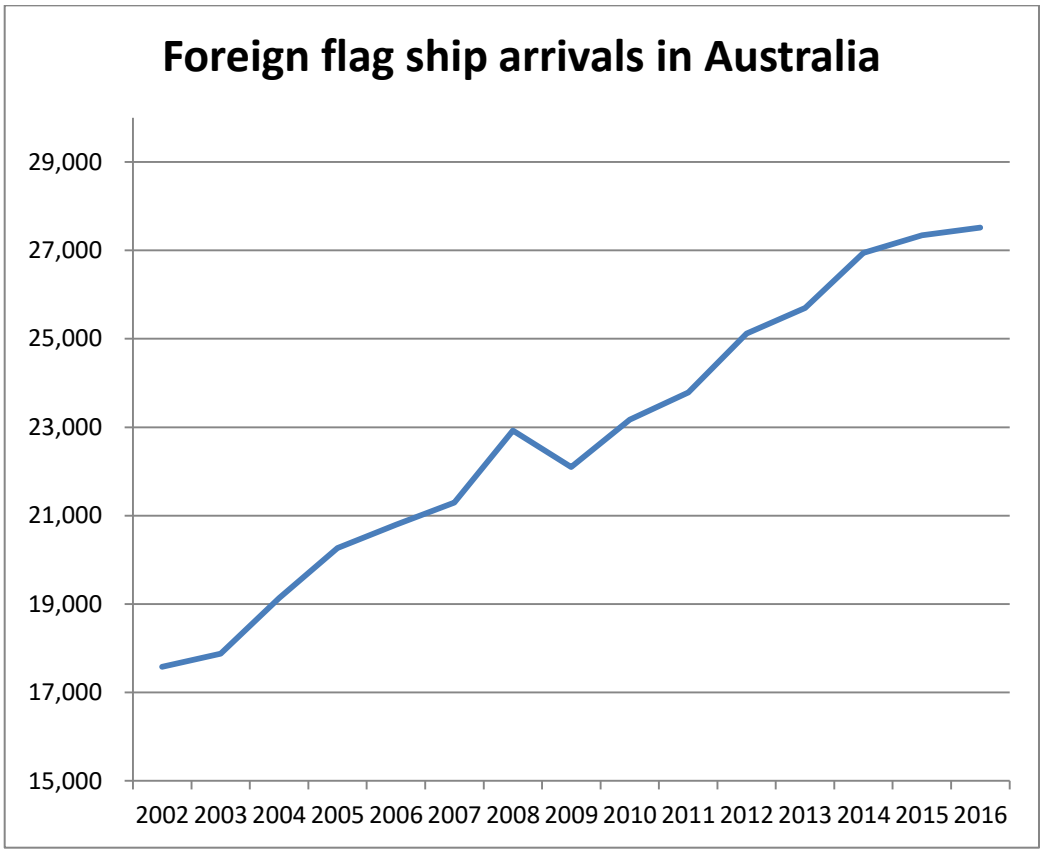
2.2. Weakening Australian cabotage will only make these problems worse. It is the opinion of the MUA that this Bill weakens the *Coastal Trading (Revitalising Australian*

[1] Assefa Aregay Sefara, *Achieving access to the maritime transport services market in the European Union: a critical discussion of cabotage services*, Australian Journal of Maritime and Ocean Affairs (2014), 6(2), 106.
[2] Commonwealth of Australia, Report: Increasing use of so-called Flag of Convenience shipping in Australia Chapter 5, 5.56, 5.60.

Shipping) Act 2012 (Cth) ("**CT Act**"). The MUA contends that the Bill (if passed) would have a similar impact on the Australian shipping industry, to that predicted following the introduction of the *Shipping Legislation Amendment Bill 2015* ("**the 2015 Bill**"), by former Transport Minister, Warren Truss, which was ultimately defeated by the then Senate on 26 November 2015. In the event the 2015 Bill had been enacted, it would have allowed foreign flagged vessels to operate for up to six months per year, between Australian domestic ports, without being required to pay Australian level wages.

2.3. Over the past two decades, international sea freight to and from Australia has increased approximately 2.5 times, with Australia's ports handling $423 billion of international trade in 2014-15, an increase of about $100 billion since 2005-6.[3] Despite these increases the Australian flagged coastal shipping sector has reduced in size over the same period, and has been accompanied by a spate of unemployment among skilled Australian seafarers. Presently there are 371 unemployed seafarers in the MUA's national database, the "Employment Assistance System." This covers deck positions, ratings and catering qualifications, however, it does not include the number of seafarers unable to afford revalidation of their seafaring qualifications or those covered by the two other maritime unions in Australia, the Australian Institution of Marine and Power Engineers and the Australian Maritime Officers Union. This high level of unemployed seafarers can be attributed to the increased use of international and FOC shipping in Australian waters, which has increased by 78% since 2002.[4]

Figure 1: Foreign flag ship arrivals in Australia



[3] Bureau of Infrastructure Transport and Regional Economics, Australian Sea Freight 2014-15, p. 3.
[4] Ibid.

Source: Compiled by the MUA from AMSA, Port State Control Annual Reports 2002-2016.

2.4. The lack of support for Australian shipping by the Coalition government has meant that shipping operators have taken bolder and bolder measures to remove Australian seafarers and flout a key objective of the CT Act, namely, to promote a viable shipping industry that contributes to the broader Australian economy.[5] The Department of Regional Development and Infrastructure has facilitated the removal of these ships and their Australian crews by continuing to issue Temporary Licences ("**TL**") to the operators for the transport of cargos on international and FOC ships.

2.5. A list of the Australian ships lost since the current government took office is available at Appendix A. Some recent examples of cargo being transferred from General Licence ("**GL**") to TL international ships, with a significant loss of jobs, include:

(a) Alcoa removed the GL ship *Portland* and its Australian crew in 2015, yet Alcoa continues to carry the same alumina cargos by TL.
(b) British Petroleum removed both the *British Loyalty* and the *British Fidelity* in 2015 and 2016, yet the company still ships very large quantities of refined petroleum by TL from Kwinana to Adelaide and the east coast. There are now currently no Australian GL petroleum tankers. Australia is no 90% dependent on fuel imports and 0% of our domestic fuel freight task is carried on GL ships. There are now no Australian seafarers employed in transportation of domestic fuel cargoes, yet 2.8 million tonnes of fuel is shipped from Kwinana to the Eastern States annually.
(c) CSL Australia removed the Australian crew from the *CSL Thevenard* in 2017 and the *CSL Brisbane* in 2016. These ships have now been renamed the *Adelie* and the *Acacia* and they continue to carry the same cargos in Australia by TL instead of GL.

2.6. There are also a number of ships that appear to be trading in Australia indefinitely on a TL (Table 1). Many of these ships have been operating carrying domestic cargos in Australia since before current records began in 2012.

[5] CT Act s 3(1)(a)

Table 1: International ships with international crews carrying domestic cargos on a long-term basis in Australia, under a Temporary Licence.

Ship	Flag	Carrying domestic cargos on a Temporary Licence since	Temporary Licence holder	Australian crewed?
ICS Silver Lining	Antigua & Barbuda	March 2013	Inco Ships	No
Wincanton	Marshall I.	before 2012	Orica Australia	No
Stadacona	Bahamas	before 2012	CSL Australia	No
Alcem Lugait	Bahamas	before 2012	CSL Australia	No
Adelie (ex-CSL Brisbane)	Bahamas	December 2016	CSL Australia	No
Glory Atlantic	Norway NIS	September 2014	CSL Australia	No
Acacia (ex-CSL Thevenard)	Bahamas	September 2017	CSL Australia	No
Gas Defiance	Marshall I	Feb 2013	Origin Energy	No
Gas Shuriken	Marshall I	Feb 2013	Origin Energy	No
Oslo Bulk 5	Singapore	November 2016	Incitec Pivot	No

Source: Department of Infrastructure and Regional Development, Temporary Licence Voyage Reports, 8 November 2017. Available at https://infrastructure.gov.au/maritime/business/coastal_trading/licencing/voyage_reports.aspx

2.7. There is a clear cut case that increasing access of international and FOC vessels to operate in Australian waters will (and does) undercut Australian jobs by making Australian ships uncompetitive. In addition, foreign crews on FOC ships are not subject to background checks yet are allowed to carry petroleum products, ammonium nitrate and LNG around the Australian coast.[6] The net result being the decimation of Australian jobs and the flouting of Australia's national security interest.[7] The proposed Bill does nothing to rectify this.

3. Consultation and alternate recommendations

3.1. The Coalition Government has put forward that in preparation for the Bill, they engaged in lengthy consultation with industry stakeholders, industry and employee

[6] Mr Paddy Crumlin, National Secretary, MUA, Committee Hansard, 4 December 2015, p. 2.
[7] Anthony Ablanese, *Truss's shipping legislation is an astounding betrayal of Australian workers*, The Guardian, 26 October 2015 https://www.theguardian.com/commentisfree/2015/oct/26/trusss-shipping-legislation-is-an-astounding-betrayal-of-australian-workers

representative groups, government agencies and other interested parties.[8] Notwithstanding the above, the Bill has ignored key proposals put forward by the industry, via exhaustive meetings with stakeholders as part of an industry Green Paper.[9] The MUA engaged at length in this process, and notes the Bill does not address any proposals aimed at growing Australian content in coastal shipping, such as the 'strategic fleet concept', that provides an opportunity to achieve better co-ordination between Navy objectives and the commerciality of the merchant shipping sector.[10] The concept of the strategic fleet as recommended by the industry Green Paper, was defined as "vessels that offer strategic national interest benefits to the nation."[11] The vessels were proposed to be fully Australian and during operations of commercial activities (not chartered to Government operations), the additional cost (above foreign ship costs) was to be offset by external funds. Such funds were proposed to be raised via the application of the Seagoing Industry Award Part B (and simplification of the administration and process of raising said funds), to a Strategic Maritime Development Fund ("**SMDF**"). The SMDF funds were proposed to, amongst other things, act partly as the external funds required by the Strategic Fleet.[12] The MUA continues to advocate for and support this proposal.

3.2. The Bill is also silent on proposals put forward by the MUA in January 2017, in its submission to the Government following the release of the industry Green Paper. Such proposals included a new commercial solution, to strike the balance between a core Australian fleet supported by foreign ships trading on a TL.[13] In striking this balance, it was acknowledged that the supply chain requirements of the shipper (including fair freight rates) and the business imperatives of the ship provider needed to be met. The proposal had 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. [14] This proposal has been ignored in the current Bill.

3.3. The Australian shipping industry is in a difficult situation. Yet through this Bill the government has demonstrated a remarkable lack of vision of how the industry could continue to contribute to the Australian economy, despite considerable efforts and detailed recommendations from industry stakeholders. It appears that the government is prepared to sit back and let yet another industry die a slow death, to the detriment of the people that work in it and the country as a whole.

3.4. The current Bill should be defeated, for the reasons set out below. To support this view, we will go through each of the main amendments proposed by the Bill in turn, and will make recommendations accordingly.

[8] Australian Government, Department of Infrastructure and Regional Development, Regulation Impact Statement, Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017, September 2017, 23
[9] Maritime Industry Australia Limited, Coastal Trading Green Paper – A Maritime Transition, 2016, 1.
[10] Ibid, 4.
[11] Ibid.
[12] Ibid.
[13] Maritime Union of Australia, MUA Policy Views to Supplement the Industry Green Paper – A Submission to the Hon Daren Chester, Minister for Infrastructure and Transport, January 2017, 2
[14] Ibid.

4. The Bill

4.1. The Bill was introduced by the Hon. Darren Chester, Minister for Infrastructure and Transport, into the Lower House of the Commonwealth Parliament on 13 September 2017. Following referral of the Bill to the Committee, a report is due to be handed down by 4 December 2017. The Explanatory memorandum attached to the Bill, notes that the purpose of the Bill is to amend the CT Act, in an attempt to:

> *Simplify coastal trading regulation, to reduce the administrative impost associated with the current regime, to expand the coverage of the Coastal Trading Act, and to provide clarity on a number of minor technical matters*.[15]

4.2. In particular, it is proposed that the Bill will:

(a) remove the five-voyage minimum requirement to apply for a temporary licence;
(b) streamline the processes for making changes to temporary licences by creating a single variation process;
(c) amend voyage notification requirements so that notifications are only required when voyage details have changed from that approved on the licence;
(d) amend the tolerance provisions for temporary licence voyages to better reflect industry practice;
(e) allow for temporary licences to be issued in emergency situations;
(f) amend the definition of coastal trading to include voyages commencing and concluding at the same port;
(g) amend the definition of coastal trading to include ships engaged in dry-docking;
(h) amend the definition of coastal trading to include voyages between ports and other defined places in Australian waters such as offshore facilities;
(i) allow vessels to be covered by a coastal trading licence while dry-docking;
(j) clarify that applications for a variation to a temporary licence must be made by the temporary licence holder; and
(k) require temporary licence holders to provide a vessel's International Maritime Organization (IMO) number to assist with easy identification of vessels.

5. Proposed licencing amendments

5.1. Currently, Australian flagged vessels (being those registered in the Australian General Shipping Register) operate under a GL[16], which gives them unrestricted access to the Australian coast. Foreign vessels operate under a TL,[17] which provides them with restricted access to engage in specific coastal trading voyages, for a period of one year.[18] Emergency Licences are also available for vessels to respond to significant national emergencies, which are valid for no more than 30 days.[19]

[15] Explanatory Memorandum page 1
[16] CT Act s 13
[17] CT Act s 28

[19] CT Act s 63

5.2. The proposed removal of s 28(2)(a) of the CT Act, relates to the current five-voyage minimum requirement to apply for a TL, and is opposed by the MUA. The removal of a five voyage minimum requirement is likely to increase the number of TLs granted, when such work could be done by Australian crewed ships, operating under a GL. The original purpose of this measure was to allow GL ships a reasonable degree of visibility of the trade they are bidding for, and to facilitate their potential participation in this trade. It appears that the government is abandoning this objective.

5.3. The proposed changes to TLs that are outlined as a streamlining measure are supported by the MUA. It is recognised that these measures will allow for the consolidation of applications for new voyages and variations to existing voyages, as opposed to the current two pronged approach. This will allow applications/variations to be placed into one application, instead of having two types of variations as presently required.[20]

5.4. The repeal of the definition of 'emergency licence' from the CT Act,[21] would enable TLs to become available in emergency situations. Under the Bill, TLs would be granted in non-emergency situations and would remain valid for 12 months, while TLs granted for emergency situations would be valid for 65 days under the proposed s 28(1A). Should emergency licences be removed, the MUA submits that there should be strict criteria regarding the ability of a TL to operate in an emergency situation, so that it does not become an additional option for TL holders to operate under in the absence of an emergency, or to continue to operate under once the emergency has passed (up until the 65 day expiry).

5.5. The MUA notes that there have been no applications for emergency licences in the past 5 years of operation of the CT Act. We submit that retention of the emergency licence provisions as they currently stand in the CT Act, is sensible in order to prevent the creation of unnecessary additional loopholes open to exploitation by shipping companies operating on TLs, as there are no negative effects associated with the current provision's continued operation.

5.6. Section 30 of the CT Act requires that the Minister publish details of relevant TL applications on the Department's website, within 2 business days following the receipt of the application. The Bill seeks to remove this safeguard by not requiring all TL applications to be circulated. Under this Bill, the Minister would be provided with the power to determine which kinds of cargo or passengers must engage in consultation with the persons affected. This is meant to facilitate the streamlining of applications where it is known that there are no GL vessels however, a new GL holder would be denied the opportunity to contest the voyage, and similarly, unions are denied to opportunity to oppose such an application for a TL. The MUA strongly opposes this proposal, as it will deny meaningful consultation with affected stakeholders and reduce transparency.

[20] CT Act, Division 2, Subdivision C
[21] CT Act, Division 3, Subdivision A

6. Voyage notification requirements

6.1. The MUA strictly opposes the proposed subsection 43(1), which if passed, would enable voyage applications to be varied (even if already notified), as long as the voyage itself had not commenced. This provision would deny a GL holder the ability to contest for a voyage, as it would be open to the TL holder to vary the application at the very last minute.

6.2. Further, the proposed amendment to voyage notification requirements in which notifications would only be required when voyage details have changed from that approved on the licence, is also opposed by the MUA. In effect, this would allow a TL holder who has already provided complete and accurate information regarding voyages and intends to undertake those voyages as specified in the TL, to be relieved of the need to provide a notification to the Minister. This proposed amendment could allow vital information such as the ship name to not be reported, as this would only be required at the time of the application 'if known.' It would appear that this would deny the Australian Maritime Safety Authority and the Fair Work Ombudsman of information crucial to their enforcement responsibilities. It is recommended that this proposed provision be abandoned, and that the status quo remain.

7. Voyage definition: intrastate and offshore voyages

7.1. The proposed extension of the definition of a 'voyage' to include voyages that commence from and conclude at the same port, is supposed to open the coastal trading regime. It would therefore cover chartered recreational vessels that typically embark and disembark at the same port and wish to apply to the Minister for a declaration under section 12 of the CT Act. In effect, this would provide protection from customs importation requirements and indefinite use of Maritime Crew Visas ("**MCV**") for crew, by virtue of s 112 of the CT Act. It has wide ranging implications for other types of vessel operations on intra-state voyages, such as bunkering, transhipment operations and the domestic small cruise/marine tourism sector, that would be considered 'voyages' under the CT Act. Operators of such vessels could therefore automatically apply for a TL and commence using foreign crew. It is for the reasons above that the MUA strongly oppose the extension of the definition of 'voyage.'

7.2. The Bill also seeks to provide the Minister with the power to declare, in writing, that the CT Act applies to vessels undertaking intra-state voyages. Distinct from the current provisions of the CT Act, which enable a party to 'opt in', the Bill would provide the Minister with a specific power to declare that certain intra-state trading vessels would come under the CT Act.

7.3. It is recognised that such an expansion is meant to facilitate ships transporting liquid fuel products from offshore facilities to the mainland, and for them to be included under the CT Act. However, it could also be used by a Minister so inclined, to declare that a trade such as Rio Tinto foreign bauxite ships, fall under the CT Act, thereby allowing a GL holder to contest the trade. In the same vein, it would also be open to that same Minister to declare a raft of intra-state ships such as those operated by Seaswift, to come under the CT Act, thus allowing the operator to replace GL ships with TL ships. The MUA strongly opposes this proposed expansion of ministerial powers.

7.4. The MUA recognises that the extension of the CT Act to such circumstances in the offshore may provide for an increased volume available in petroleum trade, to be contested by a GL ship. It could also have the positive effect of providing backloading or triangulation opportunity for a GL ship. However, the MUA would only support such an expansion where any ministerial power used to declare an intrastate voyage is only applicable to trading ships and the exclusion of offshore industry vessels, remains.[22] It is critical for this exemption to be effective, that a strict definition of a trading ship is inserted.

8. Tolerance provisions

8.1. For the sake of clarity, the MUA notes that an acceptable tolerance limit is defined under s 6(1) of the CT Act, as being:

(a) in relation to cargo authorised to be carried on a vessel under a temporary licence—not more than 20% more, or less, of the volume of cargo authorised to be carried under the licence; or

(b) in relation to passengers authorised to be carried on a vessel under a temporary licence—not more than 20% more, or less, of the number of passengers authorised to be carried under the licence; or

(c) in relation to a loading date—5 days before or after the loading date.

8.2. The amendment proposed to the definition of what constitutes an 'acceptable tolerance limit', is not more than 200% more or 100% less, than the volume of cargo or number of passengers authorised to be carried under a TL. This is a steep increase from the current limit of 20% more or less than the authorised cargo or number of passengers provided for under s 6(1) of the CT Act. The definition of acceptable tolerance limits is also proposed to change with respect to loading dates, from five days to thirty days, before or after the loading date authorised on a TL. This will allow TL holders to load cargo, passengers or liquid fuel from an offshore facility, up to 30 days before or after the original loading date approved on the TL. It has been put forward that such tolerance provisions for temporary licence voyages will better reflect industry practice, which the MUA strongly refutes.

8.3. The consequence of enacting the above, would be that it would be commercially impossible for an Australian vessel to contest for cargo, as the owner/operator would never know the actual cargo or passenger volume and/or the precise loading date. If enacted, this will undercut and decimate the ability for Australian workers on Australian ships to compete to earn a living in their own country.

9. Vessels dry docking and docked for service

9.1. The Bill proposes to allow a TL vessel to dock for service and not be considered to be "imported" under the *Customs Act 1901* (Cth) ("**Customs Act**"). Avoiding the importation provisions under the Customs Act means that not only is the vessel not

[22] CT Act s 10(e)

required to pay import duties, the Maritime Crew Visas ("**MCV**") held by crew onboard do not expire after 5 days (as they previously would have), allowing both vessel and crew to remain in Australia for the period of dry docking or maintenance. As this provision would only apply to existing TL vessels, it would not extend to large cruise vessels, especially those which are home ported in Australia and exempt from the CT Act. These are the main group of vessels likely to use Australian dry docking and maintenance/repair facilities.

9.2. The MUA is of the view that it is inappropriate and inconsistent with the Government's work visa policy that non-national seafarers on a MCV can work within the migration zone, without the usual safeguards applying to a work visa. Such non-national seafarers employed on TL ships are often not 'in-transit' as part of a continuing international voyage. The MUA submits there is strong justification for a separate class of 'maritime crew visa' for non-nationals employed on ships operating under a TL, that contains the standard labour market testing of a work visa, including payment of market rates and supported by the Specification of Income Threshold and Annual Earnings made under the *Migration Regulations 1994*.

9.3. Further, the MUA submits that the approval requirements for obtaining a MCV should be strengthened, so that the security, character and identity checks are consistent with/equivalent to the security, character and identity checks required for the issuing of a Maritime Security Identification Card (**MSIC**). This is the standard Australians are required to meet in order to enter and work in a maritime security zone. To allow Australian workers' non-national counterparts to bypass this important security check is inconsistent with and contrary to Australia's national security interest.

9.4. The proposed insertion of a definition of 'docked for service' into subsection 6(1) of the CT Act, provides that a vessel is docked for service if it is: in dry dock, or; docked for maintenance, repairs, cleaning or painting and not engaged on a voyage. This will enable TL holders to dock their vessel for service, and be afforded the statutory presumption against importation under s 112 of the CT Act. The purpose of this clause is to encourage vessel owners and operators to utilise dry docking services in Australia by removing the significant financial disincentive that customs importation represents. The MUA is not necessarily opposed to this provision, but it must be carefully defined to prevent abuse.

10. Require temporary licence holders to provide a vessel's International Maritime Organization (IMO) number to assist with easy identification of vessels

10.1. The proposed requirement for TLs to provide the IMO number of a vessel in order to assist with easy identification of vessels is not currently provided for under the CT Act. This is a positive change as it helps identify TL vessels. However, the Hon. Darren Chester advised in his second reading speech on 13 September 2017, that the IMO number would solely be required, as opposed to the ship's name.[23] The MUA opposes the omission of the ship's name. It would support the required provision of the IMO number, subject to this being in addition to advising and reporting the ship's name.

[23] The Hon. Darren Chester, Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017, Second Reading, 13 September 2017.

11. Conclusion

11.1. The MUA submits that there are clear synergies between our economic, environmental and security interests to maintain a vibrant local shipping industry. The current Bill and its 2015 counterpart were designed to put Australian mariners out of work and will cause Australian workers to compete for jobs attached to exploited conditions, in order to provide labour in their own country. For the reasons above, the Bill cannot and should not be supported.

Appendix A:

Australian ships lost since the election of the Abbott/Turnbull government in 2013

2017 The Australian Flagged ship ***CSL Thevenard*** went to dry dock in Singapore and the crew were sacked. The ship is now back on our coast as the *Acacia* with a Bahamas flag.

2016 The Australian crew of the ***CSL Brisbane*** were removed, but the ships is now back and trading domestic cargo as the Bahamas flag *Adelie*.

2016 The foreign flagged Transitional General Licenced (TGL) and Australian crewed ***British Fidelity*** was withdrawn from the coastal trade by BP – Australia's last petroleum tanker

2016 The foreign flagged TGL but Australian crewed ***CSL Melbourne*** carrying Rio Tinto alumina was replaced by a foreign flagged ship with foreign crew – the same volume of alumina required transporting

2016 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

2015 The Australian flagged and crewed ***Alexander Spirit*** was withdrawn from service by Caltex due to closure of the Kurnell refinery

2015 The Australian flagged and crewed ***Hugli Spirit*** was withdrawn from service by Caltex due to closure of Caltex Lytton refinery

2015 The Australian flagged and crewed ***British Loyalty*** was withdrawn from service by BP due to closure of BP Bulwer refinery.

2014 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.

2014 The Australian flagged and Australian crewed ***CSL Pacific*** withdrawn and scrapped

2014 The Australian flagged and crewed ***Pacific Triangl***e withdrawn by BHP due to a closure of a blast furnace at the Port Kembla steelworks. Crew offloaded in Japan December 2014 and replaced by foreign crew.