



**CALTEX**

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20 April 2012

Ms Julia Morris  
Committee Secretary  
Standing Committee on Infrastructure and Communications  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

Dear Ms Morris,

Please find attached a submission to the House of Representatives Standing Committee on Infrastructure and Communications inquiry into the shipping reform bills.

Caltex would be pleased to discuss the submission with the Committee.

For additional information or any questions regarding this submission, please contact Alisha Salvestro, Government Affairs & Media Analyst

Yours sincerely,

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Ian Ross  
Manager, Supply Operations

**Caltex Australia Limited submission to the House  
of Representatives Standing Committee on  
Infrastructure and Communications inquiry into  
the shipping reform bills**

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**1. Introduction**

Caltex welcomes the opportunity to further contribute to the *Stronger Shipping for a Stronger Economy* reform agenda embarked on by the Commonwealth Government.

This submission provides comment on the following bills introduced into Parliament on Thursday 22 March 2012:

- *Coastal Trading (Revitalising Australian Shipping) Bill 2012 (the Bill)*;
- *Coastal Trading (Consequential Amendments and Transitional Provisions) Bill 2012 (the Consequential Bill)*;
- *Shipping Reform (Tax Incentives) Bill 2012 (the Tax Incentives Bill)*; and the
- *Tax Laws Amendment (Shipping Reform) Bill 2012 (the Tax Amendment Bill)*.

Caltex appreciates the endeavours of the Department of Infrastructure and Transport (the Department) to minimise potential adverse impacts of these reforms and its attempts to ensure the reform package considered the requirements of the oil industry.

Caltex supports some of the amendments made during the consultation process, including the introduction of the two variation processes to provide for urgent variations; the inclusion of tolerances with respect to loading dates and volumes; and allowing a 'shipper' to apply for licences under the Bill.

However, Caltex still has a number of concerns with the reforms, including the need for more flexibility to cope with the variability and uncertainty associated with oil industry operations; the unnecessary and increased level of red tape and administrative burden; the imposition of a minimum voyage requirement on temporary licences and variations; the lack of publicly available information on general licence holders; the focus on contestability rather than cooperation; the need for reduced timeframes for Ministerial decisions; and overall the potential for disruptions to efficient, competitive and viable supply chains.

**2. Overview of Australian refining**

**2.1 The oil refining industry**

The Australian Institute of Petroleum's (AIP) publication, *Downstream Petroleum 2011*, states that the Australian downstream petroleum industry directly contributes \$6.2 billion per annum to the local economy (report by KPMG Econtech).

Australian refineries produced 38,400 ML of petroleum products in 2010-11, including petrol, diesel, jet fuel, fuel oil, LPG and other products. These products are important inputs into a number of industries, including air and road transport as well as mining.

In 2010-11, domestic refineries supplied around 74% of petroleum products required by major industries and to the national fuel distribution network of around 6300 service stations. The reliability of the national fuel supply chain is crucial and is dependent on the competitiveness, efficiency, and flexibility currently in the supply chain to ensure the demand for fuel is met nationally.

**2.2 Caltex business outline**

Caltex is the largest marketer of petroleum products and the number one fuel-related convenience retailer in Australia, with operations in all states and territories. Caltex currently supplies over one third of wholesale transport fuels (petrol, diesel and jet fuel) supplied nationally and also accounts for almost a third of Australia's oil refining capacity. Safe, reliable and efficient supply is at the core of our business. Ensuring continuity of supply to Caltex customers throughout Australia is of utmost importance.

Caltex owns and operates two of Australia's seven operating oil refineries, Kurnell in Sydney and Lytton in Brisbane. The refined product produced at our refineries supports just over 60% of total Caltex sales, with the balance sourced from other Australian refiners and by direct imports from overseas refineries.

The majority of the coastal shipping Caltex is engaged in is primarily for distribution of petroleum products from our refineries to terminals along the Australian east coast. Caltex has not been a ship operator since 1997 and, instead, charters vessels from the spot tanker market for international voyages and generally uses two foreign flagged time charter vessels for coastal cargo movements.

Caltex time charters (leases) two Australian-manned petroleum product ships, the Alexander Spirit and the Hugli Spirit, and these vessels undertake a majority of Caltex's petroleum product movements. Currently, there are no Australian-flagged petroleum product tankers on the Australian coast.

Caltex spot charters foreign flagged Aframax and Suezmax crude oil tankers to transport domestic and international crude oil. Currently, there are no Australian-flagged crude oil vessels to conduct such voyages.

As outlined in Table 1, Caltex completed 145 petroleum product voyages in 2011 utilising our two permanent time charter vessels. The number of cargoes would be far in excess of the number of voyages as we load multiple products on each voyage. In 2011, Caltex completed a total of 15 crude oil voyages on the Australian coast, as outlined in Table 2.

**Table 1: Total number of petroleum product voyages (2011)**

Destination	Voyages by Hugli Spirit	Voyages by Alexander Spirit	Total voyages
Cairns	15	4	19
Townsville	14	3	17
Mackay	19	3	22
Gladstone	13	3	16
Hobart	1	17	18
Devonport	1	17	18
Inter refinery transfers	10	24	34
Exports - Melbourne	n/a	1	1
<b>Total voyages*</b>	<b>73</b>	<b>72</b>	<b>145</b>
<b>Total volume shipped (tonnes)*</b>	<b>969,812</b>	<b>830,767</b>	<b>1,800,579</b>

\*Excludes imports, exports and SVPs

**Table 2: Total number of coastal crude oil voyages (2011)**

Origin	Destination	Total voyages
Hastings	Botany Bay	12
Dampier	Brisbane and Botany Bay	1
Varanus	Botany Bay	1
Varanus	Brisbane	1
<b>Total voyages</b>		<b>15</b>

Caltex made use of the single voyage permit (SVP) regime for the coastal movement of crude oil and to address unforeseen and unplanned movements of petroleum product. Caltex required three SVPs for petroleum product voyages in 2010 and four in 2011. Caltex also required 24 SVPs for the coastal movements of crude oil in 2010 and 15 in 2011.

Caltex's primary objectives are to maintain reliable supply of crude for its two refineries as well as the reliable supply of product to its terminals to meet the demand for fuel in Australia. Crucial to meeting these objectives is having the flexibility to make appropriate adjustments

and changes to product movements to minimise any potential disruption to the Australian fuel market.

### **2.3 The role of shipping in Caltex's supply chain**

Caltex undertakes coastal trade by utilising the services of foreign vessels on an ad hoc basis, in addition to time charters. Caltex's use of SVPs, and in future temporary licences (TL), is due to mostly unplanned events arising from changes in the company's operations or external factors, such as power cuts, extreme weather events or off-test product received from suppliers.

As part of optimising our supply chain and having an efficient operation, we are required to balance supply and demand across our refineries and terminals on a daily basis. This balancing occurs throughout the supply chain and includes the movement of crude oil imports, intermediate products, and finished transport fuels.

The supply balancing occurs on a daily basis due to changes in manufacturing output, varying yields from different feed stocks, production units coming online or going offline, market demand variances, and changes to shipping timetables.

Given the variable and unpredictable nature of our operations, unplanned movements will always occur and are a business reality for Caltex. In some cases these requirements are urgent and the timely movement of product can be critical to the continued operation of the refineries and in maintaining continuity of supply to the market. These circumstances are not a result of bad planning but reflect the complexities and variables that exist within refining operations.

As Australia is a net importer of transport fuels, Caltex always has a number of imports on the water and a variety of foreign vessels calling at terminals and refineries. Changes to the movements of these vessels often present the most timely and cost effective way to manage events outside Caltex's control, such as extreme weather events or unplanned refinery shutdowns.

In an unpredictable and variable operating environment, flexibility is crucial to minimising operational risk, managing costs and adapting to unforeseen circumstances efficiently to minimise their impact on the supply chain.

## **3. Recommended amendments**

Caltex understands the objective of the shipping reform package is to promote and revitalise the Australian shipping industry. However, the Bill as it stands is restrictive and unmanageable in the unpredictable environment Australian oil refiners operate in, as described by the case studies in Appendix 1.

It is essential that the Bill takes into consideration the commercial realities of industries, like oil refining, which rely on shipping for their supply operations. For Caltex, if these reforms do not consider the impact on the normal operating practices of Australian oil refiners then they have the real potential of contributing to fuel supply disruptions throughout Australia.

The Bill as it stands presents a material degradation of flexibility and cost efficiency within Caltex's supply chain, and will have a potential adverse impact on the viability of our refining operations. Caltex is seeking amendments to the Bill to increase its flexibility and workability, particularly with respect to TL applications, variations and ELs.

### **3.1 Object of the Act**

The Bill outlines in Section 3 that the object of the Act is to provide a regulatory framework for Australian coastal trade that:

- 'a) promotes a viable shipping industry that contributes to the broader Australian economy;  
and  
b) facilitates the long term growth of the Australian shipping industry; and  
c) enhances the efficiency and reliability of Australian shipping as part of the national  
transport system; and  
d) maximises the use of vessels registered in the Australian General Shipping Register in  
coastal trading.'*

Caltex believes that the objects of the Bill, and reform package as a whole, should include improving the competitiveness of Australian industry in general and through an internationally competitive coastal shipping industry.

The reform package should consider the competitiveness of industry reliant on shipping by providing internationally competitive incentives to invest in the shipping industry thereby developing a market in which there is an economic incentive for shippers to use Australian flag vessels. If the Government wishes to intervene in the shipping market, the costs should be explicit through concessions to Australian flag vessels rather than hidden through regulatory burdens on other Australian industries.

Local refining in Australia is a trade exposed industry and faces the challenges of a strong Australian dollar and high operating costs. For the manufacture of petroleum products to be viable in Australia, refiners must be able to optimise their supply chains and maximise the utilisation of the vessels they have already committed to or that are available at short notice.

The Bill will limit Caltex's ability to efficiently move products in a timely manner during unplanned events and potentially adversely impact the reliability of supply of transport fuels nationally. This clearly conflicts with one of the objects of the Act, Section 3(c).

The shipping reform package, in particular the Bill, will increase red tape at a time when Commonwealth and state governments, together with business, are seeking ways to reduce it. The Bill contains clear examples of unnecessary and unproductive regulatory requirements and therefore should be subjected to close scrutiny to remove all regulation not essential to the objects of the Act and the broader national objective of improving business productivity through greater efficiency.

Additionally, it is essential that coastal shipping be part of the national productivity agenda and not result in increased costs, especially at a time when productivity has been identified by government and industry as a matter of importance for the future of Australian industry.

***Recommendation 1: That the reform package and the object of the Act are amended to take into consideration the competitiveness of Australian industry in general.***

### **3.2 Exemption of crude oil and petroleum product vessels**

As previously outlined, Caltex undertakes coastal trade by utilising the services of foreign-flagged vessels on an ad hoc basis, in addition to its time charters. These events are mostly unplanned and occur in response to changes in the company's operations or external factors, such as off-test product, power cuts and extreme weather events.

Flexibility is crucial given the variable and unpredictable nature of our operations, and the Bill has the real potential of disrupting Caltex's supply chain. Unplanned movements will always occur and are a business reality for Caltex. In some cases these requirements are urgent and the timely movement of product can be critical to the continued operation of our refineries and in maintaining continuity of supply to the market.

Caltex currently employs spot-chartered, foreign-flagged Aframax and Suezmax crude oil tankers to transport domestic and international crude oil. There are no Australian-flagged crude oil Aframax or Suezmax vessels currently available to safely move crude oil along the Australian coastline. The reliance on foreign-flagged vessels for crude oil movements is

expected to remain and is reinforced by the Department's Regulatory Impact Statement, dated August 2011, which states that:

*'The prospect of an Australian registered crude oil carrier on the coast is therefore considered small.'*

It is unproductive to require TLs for foreign-flagged crude oil vessels when there are no local alternatives. Requiring the Department, and the Minister, to process and approve applications to ensure that GL holders are being considered when there are no GL crude oil vessels, and not likely to be in the future, is pointless. Ultimately, it imposes unnecessary red tape and administrative burden for both applicants and the Department for no real benefit or purpose.

As outlined, Caltex undertakes a majority of its petroleum products voyages on its two time-chartered vessels. In unplanned scenarios where these vessels are engaged in scheduled movements, Caltex is reliant on foreign-flagged vessels to conduct urgent voyages as there are no Australian registered petroleum product tankers on the Australian coast. As with crude oil vessels, this is not expected to change for petroleum product tankers.

Caltex believes that in this circumstance, it would be appropriate for the Minister to exempt crude oil and petroleum product vessels from requiring TLs under Section 11 of the Bill, until such a time that a suitable Australian-flagged crude oil or petroleum product vessel exists on the Australian coast.

Caltex proposes that if these types of vessels are exempt, that they still be required to comply with the voyage reporting requirements to assist in transparency and contribute to information sharing regarding coastal movements in Australia.

***Recommendation 2: That crude oil and petroleum product vessels be exempt from the Coastal Trading (Revitalising Australian Shipping) Bill 2012 until such time that a suitable Australian-flagged, general licence vessel is brought onto the Australian coast.***

### **3.3 Temporary licence applications**

Given the variable nature of our operations it is not possible for Caltex to nominate its coastal trade for the coming 12 months because this is not known nor planned more than three months in advance. This has been the normal operating practice of Caltex, which will be adversely impacted by the requirements of the TL regime.

For the same reasons, Caltex is also not in a position to provide the detailed information required under Section 28(2) of the Bill to apply for a TL and receive voyage authorisation. As a result, Caltex will be reliant on making variations throughout the 12 month period to ensure the information provided to the Department is accurate and that the voyages we rely on will be authorised.

Amongst other things, Section 28(2)(b) of the Bill requires that applications for TLs specify:

*'the number of voyages, which must be 5 or more, to be authorised by the licence.'*

Implementing a minimum voyage requirement on TL applications is not practical or reasonable. The requirement places unnecessary restrictions on shippers who undertake less than five voyages in a 12 month period and disadvantages these stakeholders whose trade is not likely to encourage investment on the coast due to their variable needs and low demand. If these shippers have no other means but to engage foreign registered vessels to move cargo then they will not be able to apply for a TL and their trade will be severely impacted.

The only way for these shippers to obtain a TL would be to include 'bogus' or 'fictitious' voyages in their applications so that they meet the minimum voyage requirement. This places needless administrative burden on the applicant as well as the Department for, what would

seem, no benefit. This also goes against one of the aims of the shipping reform package to increase transparency and enhance the efficiency of the Australian shipping industry.

Caltex recommended the removal of the minimum voyage requirement from the Bill when it was set at a minimum of 10 voyages in the second exposure draft. Despite the number being reduced to five, the same concerns regarding the reduction in flexibility remain.

For example, Caltex undertook three petroleum product voyages under the SVP regime in 2010 and four in 2011. Caltex also undertook 24 coastal movements of crude oil in 2010 and 15 in 2011. Under the Bill, Caltex would be able to apply for a TL because more than five voyages overall were undertaken in a 12 month period.

However, if Caltex only required the three petroleum product movements in 2010 and four in 2011, then Caltex would not be able to apply for a TL unless 'fictitious' voyages were included in the application to make up the minimum voyage requirement.

The movement of petroleum product cargo is critical to maintaining supply availability and refinery production, and the minimum voyage requirement would force Caltex to provide 'fictitious' information to obtain a TL. It is an action that Caltex is not comfortable with as it is in direct opposition to the intent of the Act, particularly when the Bill's Explanatory Memorandum (page 34-35) clearly states that:

*'It is expected that the applicant of a temporary licence would disclose truthful and accurate information to enable the holder of a general licence to determine whether it is able to carry the trade and nominate to do the service'*

Clearly the intent of the minimum voyage requirement is to allow GL holders to determine if they want to nominate to carry cargo outlined in a TL application. However, if this requirement forces TL applicants to include inaccurate or 'fictitious' voyages then the intended outcome of this requirement will not be achieved.

The government cannot expect accurate information when the needs of industry have not been adequately taken into consideration and unnecessary requirements are imposed in the Bill, such as requiring details of coastal movements 12 months in advance and the minimum voyage requirement. This places applicants in a difficult and untenable position.

Removing the ability of companies, like Caltex, to apply for TLs will not enhance the efficiency or reliability of Australian shipping as part of the national transport system. It will impose unnecessary restrictions on companies who move cargo along the Australian coast because they simply cannot apply for or access licences. This will have adverse impacts on the efficient and reliable supply chains already established throughout Australia.

***Recommendation 3a: That the needs of shippers who undertake less than five voyages in a 12 month period be considered in the Coastal Trading (Revitalising Australian Shipping) Bill 2012.***

***Recommendation 3b: That the minimum requirement of five voyages per temporary licence application be removed from the Coastal Trading (Revitalising Australian Shipping) Bill 2012.***

### **3.4 Subdivision C – Variation of matters authorised by temporary licences**

Caltex supports the inclusion of the two variation processes to try and increase flexibility in the TL regime, especially with respect to urgent variations. The two variation processes are detailed in Subdivision C and D of the Bill, with Subdivision C outlining the process for 'urgent' variations or 'matters authorised by temporary licences'.

While Caltex welcomes the Bill providing for 'urgent' variations, Caltex still has a number of concerns regarding the flexibility in varying 'matters authorised' under Subdivision C.



Under Section 45(3), GL holders may write to the Minister if the variation to a TL proposed in an application:

*'could be accommodated by a voyage to be undertaken under a holder's general licence'*

GL holders must provide their written notification within 24 hours and in deciding on the application the Minister may have regard to the fact that the variation could be accommodated by a GL holder (Section 46(3)).

However, Subdivision C does not state that the Minister should also have regard to the requirements of the shipper of the cargo. This is in contrast to Ministerial decisions made under Subdivision A and D of the Bill.

It is important that the Minister considers the requirements of shippers when deciding on applications under Subdivision C, particularly when companies implement strict vetting protocols for vessels to ensure the safe movement of cargo to minimise operational risk.

For example, Caltex takes into account a range of factors when vetting a vessel including, but not limited to; inspection history (SIRE/CDI), terminal feedback history, Caltex charter history, owner quality, casualty history as well as detention history.

It has become even more imperative that the requirements of the shipper are considered in Ministerial decisions with the recent amendments to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth)*. The amendments have extended the liability of offences for the discharge of oil (or oily mixture) from a ship into the sea, from the master and owner of a ship to include the charterer of a ship. The penalties for oil pollution under the Act have also increased from \$275,000 to \$11 million for a corporation.

This change in liability reinforces the importance of companies enforcing their vetting protocols for vessels to minimise operational risk and liability for potential oil spills, particularly when charterers and shippers are unlikely to have any degree of control over the day-to-day operations on board a ship.

As a result, it is only reasonable to expect that the Minister should have regard to the requirements of the shipper when deciding on applications to vary under Subdivision C. Not doing so will create unnecessary operational and commercial risk for applicants.

Subdivision C also does not seem to take into consideration the needs of shippers who operate seven days a week. Ministerial approvals of temporary and emergency licences, including variations, are all based on business day turnarounds. This will not enhance the efficiency and reliability of the Australian shipping industry, particularly with respect to the movement of crude oil and petroleum products.

Industries that rely on shipping for the movement of cargo do not operate on the traditional five day working week. As a result, the regulations associated with the Bill should detail provisions for circumstances where urgent approvals need to be sought outside of normal business days and operating hours.

While Caltex supports the two business day turnaround for variations of matters authorised, consideration needs to be given to the requirement that a voyage notification at least two days prior to loading must be provided. Caltex understands that this is a Customs requirement and seeks clarification that the voyage notification can be submitted at the same time as the application to vary matters authorised to ensure the loading of a vessel is not further delayed. The additional delay to loading vessels is clearly demonstrated in Caltex's case studies (see Appendix 1).

***Recommendation 4a: That the Minister should have regard to the requirements of the shipper of the cargo when deciding an application to vary under Subdivision C of the Coastal Trading (Revitalising Australian Shipping) Bill 2012.***

***Recommendation 4b: That protocols for obtaining Ministerial approvals for applications outside traditional business hours and days, ie on weekends, are prescribed in the regulations associated with the Coastal Trading (Revitalising Australian Shipping) Bill 2012.***

***Recommendation 4c: That temporary licence holders submitting applications under Subdivision C of the Coastal Trading (Revitalising Australian Shipping) Bill 2012 are also able to submit the voyage notification prior to receiving Ministerial approval of the variation.***

### **3.5 Subdivision D – Variation of temporary licences to include new matters**

As previously outlined, the Bill states that to apply for a variation under Subdivision D applicants need to apply for five voyages or more (Section 51(2)(a)). That is, applications for a variation of the licence must specify:

*‘the number of voyages, which must be 5 or more, to be authorised by the licence.’*

Implementing a minimum requirement of voyages for variations to include new matters is not practical or reasonable and will impose unnecessary and costly restrictions on Caltex’s shipping operations.

Real life examples of the adverse impact this requirement will have on Caltex’s shipping operations are clearly outlined in Caltex’s case studies (see Appendix 1). In all of the case studies, Caltex would be required to apply for a variation under Subdivision D because Caltex would be adding a new voyage to its TL due to the unforeseen circumstances that arose.

However, as these variations would be for only one voyage, Caltex would not be able to apply for the variation because of the minimum voyage requirement. This would severely restrict Caltex’s operations and adversely impact on the efficiency, reliability and viability of Caltex’s supply chain.

To overcome this constraint, Caltex would be forced to include ‘fictitious’ voyages in the application to meet the minimum of five voyages. This would add unnecessary administrative burden for Caltex, and the Department, and would be in direct opposition to the objective of the reforms to increase transparency within the Australian shipping industry. Caltex does not agree with submitting inaccurate information in applications to make this Bill workable and therefore continues to call for the removal of minimum voyage requirements from the Bill.

Additionally, the seven business day timeframe for the Minister to make a decision on variations to include new matters will also severely impact the efficiency and reliability of Caltex’s supply chain. This was clearly demonstrated in the case studies where unforeseen and unplanned events require flexibility to act quickly to rectify urgent scenarios that do occur in the downstream oil industry. These events are often out of the control of companies and are not a result of bad planning or scheduling.

The case studies revealed the delays that could result from the Bill’s requirements, including the potential to minimise delays if Ministerial decisions can be made faster. To increase flexibility in the Bill and in Subdivision D’s approval process, the Minister should decide on applications to vary within three business days.

***Recommendation 5a: That the minimum requirement of five voyages be removed from Subdivision D of the Coastal Trading (Revitalising Australian Shipping) Bill 2012.***

***Recommendation 5b: That the timeframe the Minister can decide on applications be reduced from seven to three business days under Subdivision D of the Coastal Trading (Revitalising Australian Shipping) Bill 2012.***

### **3.6 Division 3 – Emergency licences**

The Department outlined in its Coastal Trading Exposure Draft Stakeholder Discussion Paper (page 10) that emergencies are likely to be:

*'limited to cargo or passenger movements in emergency situations only, such as a natural disaster or other critical emergency'*

Caltex is aware that the emergency scenarios are yet to be defined under the regulations that will accompany the Bill. However, Caltex believes that emergency scenarios should be extended to include emergencies of a commercial nature that will have ramifications beyond a company's direct operations.

Caltex has clearly outlined throughout this submission, in particular the case studies in Appendix 1, that flexibility is required in the fuel supply chain to maintain supply nationally. Disruptions to this supply chain can be detrimental to industries reliant on petroleum products, such as mining and agriculture, as well as to consumers in general.

The case studies detail circumstances that were unplanned and beyond the control of Caltex. Such circumstances are not a result of poor shipping scheduling and cannot be foreseen one day in advance, let alone 12 months in advance. Caltex believes that the unplanned circumstances described in the case studies cannot be left to rely on variations under Subdivision D and should be defined as genuine emergency scenarios.

As such, Caltex proposes that shortfalls in petroleum products be included as an emergency in the regulations. Petroleum product shortfalls can have major ramifications beyond oil companies by affecting the supply of petroleum products to customers, including defence forces, consumers and commercial customers such as airlines.

The following case study demonstrates the need to extend the emergency scenarios covered by the Bill to include those of a commercial nature, in particular shortfalls in petroleum products.

#### **Case Study 3: Severe weather event:**

In January 2011, Caltex loaded a cargo of approximately 83,000mt of Kutubu crude oil on board the Pacific Virgo (a foreign vessel) at Kumul, Papua New Guinea with the intention of fully discharging the cargo at Caltex's Lytton refinery.

On 5 January, the vessel arrived at Lytton and commenced discharge of the crude oil and was estimated to complete discharge early on 7 January.

A severe storm hit Brisbane, at around 2113hrs on the 5 January, causing an electrical trip to a refinery unit which resulted in a total shutdown of the refinery. It was anticipated that the refinery would be totally shutdown for approximately five days and partially shutdown (ie only a number of units operational) for a further five days after that.

By the following morning of 6 January, the Pacific Virgo had discharged about 61,000mt of crude oil, with about 22,000mt remaining on board. The vessel was given instructions to stop discharging. During this day, refinery management determined that it was not operationally feasible to complete the discharge of the Pacific Virgo at Lytton as it was likely there would be insufficient ullage (unfilled space) available at the Lytton refinery to partially discharge the next incoming crude cargo (on the vessel the Knock Clune) which was due in four days time.

If we did not transfer sufficient volume off the Knock Clune cargo, we would also not be able to berth the cargo at our Kurnell refinery due to the berth draft limit in Botany Bay. This would leave the Kurnell refinery at risk of running out of crude if there were any delays to start-up of the Lytton refinery, which would shorten product supply to the Sydney market, as well as further exacerbate our ability to supply the already tight Queensland market.

As a result, the decision was made to commence returning approximately 33,000mt of the already discharged Kutubu crude oil onto the Pacific Virgo, and thus move a total of about 55,000mt of Kutubu crude to Kurnell. At the time this decision was made, all efforts were being directed to keeping production feasible at our Kurnell refinery and making the Lytton refinery operational again.

It was subsequently established that a SVP was required for this unplanned coastal move and a full explanation was provided to the Department. The following is an excerpt from the response we received from the Department:

*“Understand market supply imperatives for Sydney and Queensland markets required Caltex to reload and transfer 33,000mt of crude in addition to the 22,000mt already on board to deliver a total of 55,000mt to the Kurnell refinery. The exceptional circumstances at the Lytton refinery reflect an operational necessity for Caltex to maintain production from the Kurnell refinery in the public interest.”*

It should be noted that the decisions relating to this coastal move were made in a matter of hours due to the nature of the event, which also came at considerable cost to Caltex.

If the above case study was subject to the Bill, Caltex would be limited to making a variation under Subdivision D, which requires a minimum of five voyages and takes up to seven business days for approval. This would adversely impact on Caltex's ability to rectify the situation. The full extent of delays Caltex may face as a result of the Bill is demonstrated in Appendix 1.

Caltex believes the inclusion of petroleum product shortfalls as an emergency scenario in the regulations will increase flexibility in Bill and go some way to minimising the impact of the Bill on the downstream oil industry.

***Recommendation 6a: That the emergency scenarios to be prescribed by the regulations include emergencies of a commercial nature.***

***Recommendation 6b: That petroleum product shortfalls be included as an emergency scenario prescribed by the regulations associated with the Coastal Trading (Revitalising Australian Shipping) Bill 2012.***

### **3.7 Emergency licence provisions should reflect the requirements of applicants**

Section 3(2) of Bill states that one of the ways the Bill aims to achieve its objects is by:

*‘(c) ensuring that a vessel that is used to engage in coastal trading under an emergency licence has the access to Australian waters required to deal with the emergency to which the licence relates.’*

Caltex believes that the requirements outlined in Division 3 – Emergency licences do not adequately take into consideration the needs of shippers who may require an EL.

Section 66(4)(a) states that in deciding applications for ELs, the Minister must decide an application:

*‘within 3 business days after the application is made’*

This timeframe may be extended if the applicant varies the application (Section 65) or the Minister requests the applicant to provide additional information (Section 76).

In genuine emergencies, the Minister cannot reasonably expect to take a minimum of three business days to decide on an EL application. The three business day timeframe for Ministerial approval is actually longer than the approval timeframes for variations of ‘matters authorised’ under Subdivision C.

In an emergency scenario, it is unlikely that a shipper can wait 24 hours for licence approvals, let alone three business days. Therefore, in an emergency the Minister and Department should support the needs of these shippers to minimise disruptions and assist shippers to resolve the emergency efficiently and with minimal consequence.

With respect to Section 66(4), Caltex proposes that applications for ELs should be decided within one business day to reflect the likely time pressure and critical circumstances that would exist if the conditions for an EL applied.

Additionally, TL and EL holders are required to submit a report 10 business days after the completion of each voyage. While this may be achievable for TL holders, it is highly likely that it may not be practical and/or achievable for emergency voyages. Caltex therefore recommends that the 10 business day reporting requirement be increased for ELs.

As previously outlined, the timing of approvals for TLs and ELs, including variations, are based on business days. Emergency scenarios are not limited to occurring on business days and may occur any day of the week. Therefore, there should be provisions in the regulations for the processing and approval of ELs outside of normal business days and hours. This would reflect the needs of applicants in a genuine emergency scenario and ensure that the Bill is giving them access to Australian waters to deal with the emergency.

If such provisions are not provided, a possible solution may be to include in the Bill a statutory defence for undertaking an emergency voyage without the required approval and/or licence. This would reduce uncertainty for EL applicants and ensure that their ability to address an emergency situation is not restricted by legislation.

For example, if petroleum product shortfalls were classed as an emergency scenario, Caltex is aware of existing Commonwealth legislation (ie the *Fuel Quality Standards Act 2000*) that takes into consideration the reality that a shortfall in the supply of a fuel may occur and that such shortfalls have the potential to be a serious threat to the interests of consumers, and/or economic and regional development. The following is an excerpt from the *Fuel Quality Standards Act 2000 (Cth)*:

*“Division 3—Approvals*

*Subdivision A—Grant of approval*

*13 Grant of approval*

*(1) The Minister may grant to any person an approval in writing that varies a fuel standard or a fuel quality information standard in a specified way in respect of specified supplies of the fuel by:*

*(a) that person; or*

*(b) any other specified person (a regulated person).*

*(2) Subject to subsection (3), the Minister may grant a type of approval under subsection (1), known as an emergency approval, if the Minister is satisfied that:*

*(a) a shortfall in the supply of a fuel will exist within two weeks; and*

*(b) the shortfall will have a serious impact on:*

*(i) the interests of consumers; or*

*(ii) economic or regional development; and*

*(c) the shortfall will not reasonably be met by one or more persons (other than the applicant for the approval), either separately or together; and*

*(d) granting the approval will enable, or assist in enabling, the shortfall to be met or mitigated; and*

*(e) the shortfall will exist because of exceptional circumstances.”*

The above excerpt may provide a starting point for considering and developing criteria for statutory defences that may be included in the Bill. Consideration would also need to be given to the other emergency scenarios and what would constitute a statutory defence in their situation.

***Recommendation 7a: That the Minister decides on an emergency licence application within one business day to reflect the needs of shippers in an emergency scenario.***

***Recommendation 7b: That the reporting requirements for emergency voyages be increased to 20 business days.***

***Recommendation 7c: That a statutory defence for undertaking an emergency voyage without an emergency licence, or variation, be included in the Coastal Trading (Revitalising Australian Shipping) Bill 2012.***

### **3.8 No limitations on the number of variations**

As previously outlined, the minimum voyage requirement and requiring TL applicants to provide details of their coastal trade 12 months in advance will result in Caltex being reliant on making variations to its TL.

Caltex requires flexibility in its shipping operations to ensure that we have the capability to address unplanned scenarios that do arise within the Australian downstream oil industry, as demonstrated in our case studies (see Appendix 1).

The Explanatory Memorandum to the Bill clearly states, on page 23, that there is:

*'no limit to the number of times a temporary licence may be varied.'*

This has been reiterated by Departmental officials on a number of occasions. However, this is contrary to Section 46(2)(b) of the Bill which states that in deciding an application, the Minister may have regard to:

*'whether the applicant has previously applied for a variation of a temporary licence (whether under this Subdivision or Subdivision D of this Division)'*

In addition, Section 63 of the Bill states that the Minister may issue a written notice to a TL holder if the Minister considers that the TL is being used in a way that circumvents the purpose of the GL provisions or the object of the Act. Specifically, in considering the inappropriate use of a temporary licence, the Minister may have regard to:

*'whether the licence has been varied under Subdivision C or D of this Division, and if so, how many times.'*

As a result, the Minister has the ability to take into consideration the number of variations made by a TL holder when deciding to cancel a TL. This creates a level of commercial risk for companies, such as Caltex, who operate in unpredictable and unplanned environments and will rely on variations to meet these unforeseen circumstances and maintain a reliable and efficient supply chain.

In determining the inappropriate use of a TL, the Minister should be required to consider the requirements of the shipper and the circumstances requiring the shippers need to make a number of variations.

***Recommendation 8a: That no limitations be placed on the number of variations that a temporary licence holder may make with respect to their temporary licence.***

***Recommendation 8b: That the Minister should also have regard to the circumstances that required the shipper to make a variation, or number of, when considering if a temporary licence has been inappropriately used.***

### **3.9 Register of general licence holders**

The Bill as it stands places a majority of the onus on TL applicants to provide information regarding their voyage requirements and coastal trade. However, the same requirements are not extended to GL holders. It is likely that the Bill will result in asymmetrical information in the

marketplace, whereby GL holders have access to more information than TL applicants and/or holders.

The Bill also places a large amount of emphasis on contestability by allowing GL holders to contest TL applications. The Bill imposes requirements and restrictions on how TL and GL holders engage with each other post-application rather than promoting and facilitating negotiations prior to applications. This creates a level of uncertainty and operational risk for TL applicants.

Applications for TLs will be published on the Department's website and the Department will also notify GL holders and third parties of the application. Upon granting a TL application, the following information will also be published on the Department's website: TL number; the day the licence commences; the number of voyages authorised by the licence; the loading dates; the kinds and volume of cargo expected to be carried; the type and size, or type and capacity, of the vessel to be used; and the ports where cargo is expected to be taken on board and unloaded.

With respect to approved GLs, the Department will publish on its website: the relevant GL number; the holder of the licence; the holder's business name and address; the vessel to which the licence relates; and the period of the licence.

TL holders are not notified when a GL application has been approved and information regarding the GL holder's vessel, in particular its availability, capabilities or capacities, will not be made publicly available via the Department's website. This fails to facilitate trade, encourage negotiations between licence holders, and results in asymmetrical information.

To overcome this, the Department should ensure that once a GL application has been approved, TL holders who may require the services of the GL holder be informed, and information pertaining to vessel's availability, capabilities and capacities is made publicly available on the Department's website. This would vastly improve information sharing within the industry, particularly with respect to the availability of local vessels.

Caltex proposes that the Department should provide a mechanism for this information to be made publicly available. This would encourage potential TL applicants to easily determine if their needs could be met by an Australian-flagged vessel and seek to discuss trade prior to submitting a TL application. This would help to increase transparency in the industry, minimise commercial uncertainty for TL applicants and potentially reduce the time taken to approve applications.

***Recommendation 9a: That Section 16(2) of the Coastal Trading (Revitalising Australian Shipping) Bill 2012 be amended to include the capabilities and capacity of the vessel to which the licence relates.***

***Recommendation 9b: That general licence holders be required to make publicly available, via the Department's website, the availability of their vessels to facilitate trade in the Australian shipping industry.***

### **3.10 Definition of voyage**

Caltex is concerned about the Bill regulating Australian coastal trade on a 'port to port' basis, which stemmed from the definition of a voyage being removed during the consultation process. This is of concern because the downstream petroleum industry undertakes voyages whereby multiple products are carried and multiple ports are used within one defined voyage – that is, on an 'empty to empty' basis.

Defining voyages on a 'port to port' basis provides GL holders with the ability to give notice in response to segments of an entire voyage. This means that when an oil company is moving multiple cargoes to multiple ports on one voyage, a GL make give notice that they are able to carry part of the cargo. If this occurred, the cargo would be spread across two vessels instead

of one leading to unnecessary duplication, increased costs and operational risk. This also raises a concern about the safe movement of petroleum products along the Australian coast.

If the normal operating practices within the downstream petroleum industry are interrupted by the segmenting of cargo, this will negatively impact on the industry's economical and efficient shipping operations and undermine the commercial viability of this trade. It is also in direct contrast to one of the objects of the Act, Section 3(c), which is to provide a regulatory framework that:

*'(c) enhances the efficiency and reliability of Australian shipping, as part of the national transport system.'*

Caltex proposes that a voyage be defined by the entirety of a movement on an 'empty to empty' basis rather than on a 'port to port' basis. This could be provided for certain classes of cargo only, such as crude oil, petroleum feedstock and finished petroleum products, where the segmenting of cargo would lead to increased operational risk, as well as uneconomic and inefficient supply chains.

***Recommendation 10: That a voyage under the Coastal Trading (Revitalising Australian Shipping) Bill 2012 be defined on a 'empty to empty' basis for certain classes of cargo, including crude oil, petroleum feedstock and finished petroleum products, to ensure the safe and reliable movement of crude oil and petroleum products along the Australian coast.***

### **3.11 Transitional arrangements**

Caltex is concerned about the uncertainty created by the transition between the current SVP regime and the TL regime due to commence on 1 July 2012. Caltex believes that there is the potential for disruptions to crude and petroleum voyages due to the limited provisions being made to manage the transition.

To minimise uncertainty and ensure a seamless transition, the government should provide a grace period for companies, and the Department, to adjust and transition to the new arrangements without impacting on the trade and shipping operations of industry.

Caltex is aware that SVP applications will only be accepted up until 30 June 2012 and the earliest a company can apply for a TL is Monday 2 July 2012 (ie the first business day following the Bill's enactment). The Bill outlines that it may take up to 15 business days for the Minister to approve a TL application, and this is at a minimum. If the 15 business day period is fully utilised by the Minister, a TL applicant will not know the outcome of their application until 23 July 2012.

Additionally, the outcome of an application may be extended beyond this date if the Minister requests further information to inform their decision and/or a GL holder gives notice in response. If either occurs, the 15 business day approval period only begins from the day the TL applicant provides the additional requested information and/or the Minister is notified of the outcome of negotiations. This creates a level of uncertainty with respect to companies having the appropriate licence to undertake their voyages during the transition between regimes.

A solution may be for the government to accept SVP applications beyond 30 June 2012, with these permits remaining valid until their specified expiry date or 31 December 2012 (whichever occurs first). This would allow both companies and the Department to adjust to the transition whilst also providing companies with more certainty around required voyages.

As outlined, Caltex currently time charters two Australian manned product ships to undertake coastal trade. These two vessels conduct the majority of Caltex's coastal movements of petroleum products, which are part of Caltex's planned supply chain.



It is understood that these vessels will be eligible for a transitional GL for a period of five years under the Consequential Bill. However, one of Caltex's time chartered vessels is under a 10-year term contract which is due to expire in August 2019.

Caltex proposes that the transitional GLs extended to these time charter vessels be commensurate with the remaining term of the time charter agreements that Caltex has entered into. This will minimise uncertainty for Caltex regarding the licensing of these time charters once the five year period has ended and the transitional GL expires. This proposal should be extended to other companies with the same contractual arrangements already established.

***Recommendation 11a: That an appropriate transition period to assist companies, and the Department, adjust to the new licensing regime and minimise uncertainty be implemented. This includes extending the acceptance and approval of single vessel permits beyond the 30 June 2012.***

***Recommendation 11b: That the period a transitional general licence is valid under the Coastal Trading (Consequential Amendments and Transitional Provisions) Bill 2012 is equal to the greater of five years or the length of an already established commercial agreement between two parties (ie shipowner and shipper/charterer).***

### **3.12 International competitiveness of tax incentives**

Caltex notes that the income tax exemption granted to qualifying companies is in effect a tax deferral regime with a clawback of the tax benefit upon distribution of profits to the company's shareholders.

The tax benefit provided at the company level is effectively taken away via either a dividend withholding tax for non-resident shareholders at up to 30% depending on the residency of the recipient, or no franking credit for resident shareholders.

Given that the Explanatory Memorandum to the Tax Amendment Bill 2012 states, on page 5, that the reform package aims to:

*'make the Australian shipping industry more internationally competitive and facilitate Australian competition on international routes'*

and that the Minister for Infrastructure & Transport, the Hon Anthony Albanese, stated in his media release, *Major reforms to shipping industry announced*, on 9 September 2011 that the reforms are:

*'designed to reform and revitalise coastal shipping in Australia to create a competitive environment attractive to investors'*

Caltex believes extending the tax benefits to shareholders in the form of deemed franking credits and dividend exemption will make it more attractive to investors both locally and internationally.

By not having deemed franking credits or dividend exemption this will detract the attractiveness of investment by local and overseas investors. The government should ensure that the tax incentives provided are internationally competitive to assist the reforms to meet their desired outcome of revitalising the Australian shipping industry. As a global industry, this is imperative for the future of Australian shipping.

***Recommendation 12a: That the government review whether the refundable tax offset is competitive with other countries to ensure that companies will be encouraged to employ Australian seafarers.***

*Recommendation 12b: That the tax benefits extend to shareholders in the form of deemed franking credits and dividend exemption, which will make it more attractive to investors both locally and internationally.*

## **Appendix 1: Case Studies**

The case studies outlined in this section provide real life examples of unforeseen circumstances encountered by Caltex that required urgent and unplanned shipping movements to ensure our refinery operations remained viable and that the reliable supply of petroleum product to customers was maintained. These case studies represent emergency scenarios for Caltex's business and required swift action to minimise disruptions to Caltex's supply chain.

These case studies were also included in Caltex's submission to the Department on 5 March 2012 as they clearly demonstrate the unpredictable nature of the Australian oil refining industry.

Caltex has applied the Bill retrospectively to the case studies to determine the impact of the temporary licence regime on Caltex's operations. In each scenario, we assumed that the Minister approves the TL and variation applications. In doing so, the extent to which the Bill is not practical or workable and the potential for adverse impacts on Caltex's refining and shipping operations is revealed.

### **Case Study 1**

#### **1. The Savannah**

Caltex purchases and imports fuel oil from Singapore for sale in the domestic marine market. An import was planned using the Savannah, a foreign vessel, to import fuel oil into Brisbane and Sydney. To complete the cargo a parcel of LSWR (intermediary feedstock) was purchased for Sydney.

The Savannah loaded from 31 January to 2 February 2012. The vessel then steamed for Australia, with the estimated time of arrival in Brisbane as 21 February.

On 11 February, Lytton Refinery had an unplanned shutdown. Over the following days a number of units could be restarted, but the restart of the Fluidised Catalytic Cracker Unit (FCCU) was delayed while a number of operational issues were dealt with.

Despite the FCCU not being operational, the feedstock for the FCCU accumulates while the other refinery units are online and functioning. On Friday 17 February, it was identified that we would need to "export" FCCU feed from Lytton if we wanted to keep the refinery online and producing diesel and jet fuel.

The Savannah was identified as an appropriate and capable vessel to transfer the FCCU feed from Lytton to our Kurnell Refinery. The timing of the 'export' allowed Lytton to continue operation of the refinery's other units and ensure there were no disruptions to the supply of diesel or jet fuel.

Loading of FCCU feed on the Savannah commenced Thursday 23 February, four business days after the requirement was identified. Loading would have commenced a day earlier except for congestion at the Lytton Refinery products wharf.

In this instance, if we had not been able to use the Savannah in this "unplanned" manner, due to the TL application, variation, and voyage notification requirements, we would have had to slow or stop the refinery.

This would have resulted in the significant shortage of diesel and jet fuel in Queensland in the short term. This would also have added significantly to the cost of the incident for Caltex, subsequently increasing the total cost of manufacturing petroleum products in Australia versus importing the finished products.

The impact of the TL regime on Caltex's ability to remedy the circumstances in this case study is outlined in the following scenarios.

**Scenario 1:**

In this scenario, assume Caltex has a TL but to undertake this unplanned voyage on The Savannah, Caltex will need to apply for a variation under Subdivision D – Variation of temporary licences to include new matters.

**Scenario 1(a):**

To apply for a variation under Subdivision D applicants need to apply for five voyages or more, as outlined in Section 51(2)(a). Based on this, Caltex would not be able to apply for a variation to undertake the voyage and therefore would not be able to move the feedstock resulting in the likely shut down of the refinery.

Even if there was a GL holder available to undertake the voyage, there is no mechanism for Caltex, or companies in similar scenarios, to go to a GL register to determine the availability of a GL vessel, its capacity and ability to meet our needs. This is a limitation of the Bill which fails one of its core objects to promote and facilitate demand for the local shipping industry.

Despite this, the likelihood of a GL vessel being available at such short notice is low and reinforces the need for Caltex to be able to take advantage of available vessels, like The Savannah, to minimise any disruption to our refineries.

**Scenario 1(b)**

Now assume that variations under Subdivision D can be made for one or more voyages (ie, no minimum voyage requirement).

Caltex would apply for the variation on Friday 17 February 2012 (ie the day it was identified that the FCCU feed would need to be 'exported' from the refinery). Within two business days, the Department publishes Caltex's application on its website and notifies GL holders and third parties of the application to vary.

GL holders may give notice in response to the application, and third parties may also provide comment, within two business days after the application is published.

If a GL holder gives notice in response, then Caltex must negotiate with the GL holder within two days after Caltex receives a copy of the notice. Within these two days, Caltex must negotiate and also notify the Minister of the outcome of the negotiations.

The Minister may, by written notice, ask Caltex for additional information if the Minister requires more information to inform his/her decision. After providing the information, the Minister must then advise the applicant if the information satisfied the Minister's needs or not. However, there is no timeframe outlined for this process.

Once all of the above occurs, the Minister then has seven business days to decide on the application. Caltex is then informed of the Minister's decision.

**Scenario 1(b)(i):**

Assume that no GL holder provides a notice in response (therefore no negotiations are required); the Minister does not request further information; and the Minister utilises the full seven business days to approve the application to vary.

If Caltex submits the variation application on Friday 17 February 2012, Caltex would be required to wait seven business days for the Minister's decision and would not receive the variation until Tuesday 28 February 2012.

Caltex would then be required to provide a voyage notification to the Department at least two business days before the actual loading date. Therefore, the earliest Caltex would be able to load the vessel would be Friday 2 March 2012.

Under this scenario, the new licensing regime would result in Caltex loading the vessel eight days later than under the current regime. This is of significant concern for Caltex and reflects the uncertainty and commercial risk imposed by the Bill.

**Scenario 1(b)(ii):**

However, if the Minister approved the variation within two business days and Caltex submitted the two business day voyage notification requirement, the earliest Caltex could load the voyage would be Friday 24 February 2012. This would result in Caltex loading the vessel one day later than under the current regime.

While Caltex views any additional delays imposed by the Bill as unacceptable, this scenario reiterates the need for reduced turnaround times to minimise the impact of the Bill on the shipping operations of Caltex, and likely other companies reliant on shipping to transport cargo.

**Scenario 1(b)(iii):**

If Caltex submits the variation application on Friday 17 February 2012, now assume that a GL holder provides a notice in response on Wednesday 22 February and Caltex receives the notice on the same day. Caltex would commence negotiations with the GL holder on Thursday 23 February, with the Minister advised of the outcome on Friday 24 February 2012.

Also assume that the Minister requires no further information and approves the application within two business days. Caltex is notified of the licence approval on Tuesday 28 February and then submits the two business day voyage notification. Caltex would not be able to load the vessel until Friday 2 March 2012.

Under this scenario, the new licensing regime would again result in Caltex loading the vessel eight days later than under the current regime. This is of significant concern for Caltex and reflects the uncertainty and commercial risk imposed by the Bill.

If Caltex is required to wait until Friday 2 March 2012 to load the cargo, it is highly possible that The Savannah would not be able to wait until that date due to other scheduled cargoes. If The Savannah was able to wait until Friday 2 March, Caltex would be required to pay demurrage (ie charges that the charterer pays to the shipowner for its extra use of the vessel) at significant cost to Caltex's shipping operations.

Of additional concern is if the Minister decided to utilise the entire seven business day period, instead of two, to decide on the application. Caltex would not receive a response until Tuesday 6 March and would not be able to load the vessel until Friday 9 March 2012. This would be 15 days later than under the current regime and is completely impractical.

This case study reveals the flexibility Caltex required to be opportunistic and make use of The Savannah to avoid a potential refinery shutdown. Under the Bill, Caltex would be delayed in loading the cargo, The Savannah would most likely not be able to wait, and Caltex would be forced to reduce production or shutdown the refinery. This would be a costly and detrimental outcome for Caltex and impact on the viability of our refineries as well as our reliability of supply to customers.

**Case Study 2**

**2. Events beyond Caltex's control**

At approximately 1900hrs on Tuesday 12 July 2005, the 132kv power supply to Kurnell Refinery was cut due to an accident involving Energy Australia during their upgrade work to

the electricity supply to Kurnell. One of the steel electricity towers collapsed bringing down the transmission lines. This resulted in a total refinery shutdown except for one unit that was maintained on minimum rates.

By the 16 July most of the refinery units had been brought back online at varying production rates.

As a result of the unplanned outage there was an immediate requirement to import finished products to ensure security of supply to the New South Wales market.

Having reviewed the stocks and planned imports it was identified on the 18 July an urgent import of jet fuel would be required to maintain supply to Sydney Airport. A cargo and vessel were organised to load in Melbourne on 21 July and deliver jet fuel into Sydney on the 24 July.

There were many other actions taken around this time, but this particular element required a fast response to secure the vessel that fortunately was in Melbourne and available at the time of the event.

This case study highlights how unplanned events result in prompt and unplanned requirements for coastal shipping of petroleum products within very short time frames. Caltex's quick response to resolving this unplanned incident ensured that we could maintain jet fuel supply to Sydney Airport and the airport was able to maintain its regular operations.

The impact of the TL regime on Caltex's ability to remedy the circumstances in this case study is outlined in the following scenarios.

**Scenario 1:**

In this scenario, assume Caltex has a TL but to undertake this unplanned voyage, will need to apply for a variation under Subdivision D.

**Scenario 1(a):**

As outlined, to apply for a variation under Subdivision D applicants need to include five or more voyages in the application. As a result, Caltex would not be able to apply for a variation to undertake the voyage and, therefore, would not be able to move the urgent import of jet fuel resulting in the likely disruption of jet fuel supply to Sydney Airport.

Even if there was a GL holder available to undertake the voyage, there is no mechanism for shippers, like Caltex, to go to a GL register to ascertain the availability of a GL vessel, its capacity or availability.

Again, the likelihood of a GL vessel being available at short notice is low and reiterates the need for Caltex to be able to quickly take advantage of best case scenarios when unplanned events occur to minimise any disruption to the refinery and maintain reliable supply to customers.

**Scenario 1(b)(i):**

Assuming that no GL holder provides a notice in response (and no negotiations are required); the Minister does not request further information; and the Minister utilises the full seven business days to approve the application to vary.

If Caltex submitted the application to vary on Monday 18 July 2005, Caltex would be required to wait seven business days for the Minister's decision, and would not receive the approved variation until Wednesday 27 July 2005.

Caltex would then be required to provide a voyage notification to the Department at least two business days before loading the vessel and, therefore, the earliest Caltex would be able to commence loading would be Saturday 30 July 2005.

Under this scenario, the new licensing regime would result in Caltex loading the vessel nine days later than under the current regime. This is of significant concern for Caltex and again reinforces the uncertainty and commercial risk imposed by the Bill.

**Scenario 1(b)(ii):**

Assuming the same conditions under Scenario 1(b)(i) apply but the Minister approves the variation within two business days. Caltex must provide the two day voyage notification prior to loading, so the earliest Caltex could load the voyage would be Saturday 23 July 2005.

Under this scenario, Caltex would be loading the vessel two days later than under the current regime and while not preferred does reiterate the need for reduced turnaround times in Ministerial decisions to minimise the impact of the Bill on the shipping operations of Caltex and, likely, other companies reliant on shipping to transport cargo.

**Scenario 1(b)(iii):**

If Caltex submitted the application to vary on Monday 18 July 2005, now assume that a GL holder provides a notice in response on Friday 22 July 2005. Caltex receives the notice on the Friday 22 July and negotiations commence on Monday 25 July, with the Minister advised of the outcome on Tuesday 26 July 2005.

Also assume that the Minister requires no further information, approves the application within two business days, and notifies the Caltex of his/her decision on Thursday 28 July 2005. Caltex would then be required to provide a voyage notification two business days prior to loading, so the earliest Caltex would be able to load the vessel would be Tuesday 2 August 2005.

Under this scenario, the new licensing regime would result in Caltex loading the vessel 12 days later than under the current regime. This timeframe would be further increased if the Minister took the full seven business days to decide on the application. This again is of significant concern for Caltex and reiterates the uncertainty and commercial risk imposed by the Bill.

**Case Study 3**

**3. Severe weather event**

In January 2011, Caltex loaded a cargo of approximately 83,000mt of Kutubu crude oil on board the Pacific Virgo (a foreign vessel) at Kumul, Papua New Guinea with the intention of fully discharging the cargo at Caltex's Lytton refinery.

On 5 January, the vessel arrived at Lytton and commenced discharge of the crude oil and was estimated to complete discharge early on 7 January.

A severe storm hit Brisbane, at around 2113hrs on the 5 January, causing an electrical trip to a refinery unit which resulted in a total shutdown of the refinery. It was anticipated that the refinery would be totally shutdown for approximately five days and partially shutdown (ie only a number of units operational) for a further five days after that.

By the following morning of 6 January, the Pacific Virgo had discharged about 61,000mt of crude oil, with about 22,000mt remaining on board. The vessel was given instructions to stop discharging. During this day, refinery management determined that it was not operationally feasible to complete the discharge of the Pacific Virgo at Lytton as it was likely there would be insufficient ullage (unfilled space) available at the Lytton refinery to partially discharge the next incoming crude cargo (on the vessel the Knock Clune) which was due in four days time.

If we did not transfer sufficient volume off the Knock Clune cargo, we would also not be able to berth the cargo at our Kurnell refinery due to the berth draft limit in Botany Bay. This would leave the Kurnell refinery at risk of running out of crude if there were any delays to start-up of the Lytton refinery, which would shorten product supply to the Sydney market, as well as further exacerbate our ability to supply the already tight Queensland market.

As a result, the decision was made to commence returning approximately 33,000mt of the already discharged Kutubu crude oil onto the Pacific Virgo, and thus move a total of about 55,000mt of Kutubu crude to Kurnell. At the time this decision was made, all efforts were being directed to keeping production feasible at our Kurnell refinery and making the Lytton refinery operational again.

It was subsequently established that a SVP was required for this unplanned coastal move and a full explanation was provided to the Department. The following is an excerpt from the response we received from the Department:

*“Understand market supply imperatives for Sydney and Queensland markets required Caltex to reload and transfer 33,000mt of crude in addition to the 22,000mt already on board to deliver a total of 55,000mt to the Kurnell refinery. The exceptional circumstances at the Lytton refinery reflect an operational necessity for Caltex to maintain production from the Kurnell refinery in the public interest.”*

It should be noted that the decisions relating to this coastal move were made in a matter of hours due to the nature of the event, which also came at considerable cost to Caltex.

The impact of the TL regime on Caltex’s ability to remedy the circumstances in this case study is outlined in the following scenarios.

**Scenario 1:**

In this scenario, assume Caltex has a TL but to undertake this unplanned voyage, will need to apply for a variation under Subdivision D.

**Scenario 1(a):**

As outlined, to apply for a variation under Subdivision D applicants need to apply for five voyages or more. Based on this, Caltex would not be able to apply for a variation to undertake the voyage and therefore would not be able to reload the Kutubu crude oil and move the crude oil cargo to Kurnell.

This example again reflects the lack of flexibility of the Bill and that the reforms have not adequately taken into consideration the needs of shippers, particularly those who may undertake less than five voyages. The minimum voyage requirement is an unnecessary imposition and restriction on companies.

**Scenario 1(b)(i):**

Now assume that variations under Subdivision D can be made for one or more voyages (ie no minimum voyage requirement). Also assume that no GL holder provides a notice in response (and no negotiations are required); the Minister does not request further information; and the Minister utilises the full seven business days to approve the application to vary.

If Caltex submits the variation application on Thursday 6 January 2011, Caltex would be required to wait seven business days for the Minister’s decision and would not receive the approved variation until Monday 17 January 2011.

Caltex would then be required to provide a voyage notification to the Department at least two business days before commencing the voyage. Therefore, the earliest Caltex would be able to load the vessel would be Thursday 20 January 2011.



In this scenario, Caltex would not be able to begin reloading the vessel until 14 days later than under the current regime. This is completely unreasonable and this scenario reiterates the need for Caltex to be able to quickly take advantage of best case scenarios when unforeseen events occur to minimise any disruption to the refinery and maintain reliable supply to customers.

**Scenario 1(b)(ii):**

Now assume that a GL holder submits a notice in response on Wednesday 12 January and Caltex receives the notice on the same day. Caltex and the GL holder commence negotiations on Thursday 13 January and the Minister is advised of the outcome on Friday 14 January 2011.

In this scenario, the Minister requires no further information and approves the application within two business days. Caltex is notified of the decision on Tuesday 18 February and submits the two business day voyage notification. The earliest Caltex would be able to load the vessel is Friday 21 January 2011.

Under this scenario, the new licensing regime would result in Caltex loading the vessel 15 days later than under the current regime. This again is of significant concern for Caltex and reinforces the uncertainty and commercial risk imposed by the Bill.