

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Coastal Trading (Revitalising Australian
Shipping) Amendment Bill 2017 [Provisions]

December 2017

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Chapter 1

Introduction

Referral of inquiry

1.1 On 19 October 2017, the Senate referred the provisions of the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 (the bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 4 December 2017.¹

1.2 The bill seeks to amend the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Coastal Trading Act) 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.²

Purpose of the bill

1.3 As noted above, the bill seeks to amend the Coastal Trading Act. In summary, the purpose of the bill is to:

- remove the five-voyage minimum requirement to apply for a temporary licence;
- provide the Minister with the power to waive the need for consultation in relation to certain cargo and passenger types (thereby focusing the need for consultation on those sectors where Australian vessels can provide competition to foreign flagged vessels);
- streamline the processes for making changes to temporary licences;
- remove the need for temporary licence holders to provide voyage notifications in certain circumstances;
- amend the tolerance provisions for temporary licences;
- change the way in which licences are issued in emergency situations;
- amend the definition of coastal trading to include voyages commencing and concluding at the same port, ships engaged in dry-docking, and voyages between ports and other defined places;
- clarify that applications for a variation to a temporary licence must be made by the temporary licence holder;

1 *Journals of the Senate*, No. 67 – 19 October 2017, p. 2138.

2 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 1.

- clarify that agents can apply for a temporary licence on behalf of vessel owners or masters; and
- require temporary licence holders to include a vessel's International Maritime Organization (IMO) number in voyage reports.³

Statement of compatibility with human rights

1.4 The Explanatory Memorandum (EM) notes that the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.5 The Parliamentary Joint Committee on Human Rights assessed the bill and reported that the bill did not raise human rights concerns.⁴

Consideration by Senate Scrutiny of Bills Committee

1.6 The Committee for the Scrutiny of Bills indicated in Scrutiny Digest number 12 of 2017 it had "no comment" on the bill.⁵

Conduct of the inquiry

1.7 The committee advertised the inquiry on its webpage, and called for submissions by 13 November 2017. The committee also wrote to a number of Commonwealth and state government departments, industry stakeholder groups, organisations and individuals to invite submissions. The committee received 19 submissions, which are available on the committee's website. A list of submissions can also be found at Appendix 1 of this report.

1.8 The committee appreciates the time and work of all those who provided written submissions to the inquiry – these submissions greatly assisted the committee in its deliberations.

1.9 The committee did not conduct public hearings for the purposes of the inquiry and based its deliberations on the written evidence provided. The committee's decision not to hold public hearings in relation to the bill also took into consideration the fact that the Senate Rural and Regional Affairs and Transport References Committee had recently undertaken a lengthy and detailed inquiry into Australia's shipping industry.

3 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 1.

4 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Report 11 of 2017, 17 October 2017, p. 60.

5 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2017*, 18 October 2017, p. 5.

RRAT References Committee: Inquiry into the increasing use of so-called Flag of Convenience shipping in Australia

1.10 In June 2015, the Senate referred an inquiry into the increasing use of so-called Flag of Convenience (FOC) shipping in Australia to the Senate Rural and Regional Affairs and Transport References Committee (the references committee) for inquiry and report.

1.11 The terms of reference for the inquiry included an investigation into the effect FOC shipping has on Australia's national and fuel security, employment and occupational health and safety standards and marine environment. The committee also reviewed the progress made in this area since the 1992 House of Representatives Standing Committee on Transport, Communications and Infrastructure report *Ships of shame: inquiry into ship safety*.⁶

1.12 The references committee's interim report, which was tabled in May 2016, examined a number of key issues around the use of FOC shipping in Australia. In addition to an examination of employment issues – including poor working conditions – the committee also investigated the decline of the local shipping sector. The interim report also inquired into, and reported on, the risks FOC shipping presents to Australia's national and fuel security and the environment.⁷

1.13 The recommendations contained in the interim report largely focused on growing the Australian maritime sector, enhancing work opportunities and conditions for Australian seafarers and improving the conditions, legal accountability and safety of FOC vessels operating in Australian waters.⁸

1.14 In July 2017, the references committee tabled its final report. In addition to providing an overview of the state of FOC shipping internationally, the report provided an outline of the current state of Australia's shipping industry and the references committee's investigation into the national security and environmental threats posed by FOC vessels.

1.15 The report also contained a summary of the various reviews that have been undertaken in relation to the Australian maritime sector over recent years. More specifically, the report considered the efficacy of the Coastal Trading Act – including the temporary licence system.

6 Senate Rural and Regional Affairs and Transport References Committee, *Increasing use of so-called Flag of Convenience shipping in Australia*, July 2017, p. 1.

7 Senate Rural and Regional Affairs and Transport References Committee, *Increasing use of so-called Flag of Convenience shipping in Australia*, July 2017, p. 12.

8 Senate Rural and Regional Affairs and Transport References Committee, *Increasing use of so-called Flag of Convenience shipping in Australia*, July 2017, p. 12.

1.16 Finally, the references committee's final report acknowledged the announcement made by the Minister for Infrastructure and Transport, the Hon. Darren Chester, MP regarding possible reforms to coastal shipping. In making the announcement, on 21 March 2017, the Minister indicated that there is potential for shipping to play a larger role in the national freight task. The Minister also noted, however, that it has "become clear that limitations in the current regulatory system are working against that potential being realised", and there is a need to:

...address a range of administrative issues in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*, which place unnecessary burdens on shipping companies and the Australian businesses that rely on coastal shipping.⁹

Structure of report

1.17 This report consists of three chapters. Chapter 1 provides an introduction to the bill and the inquiry. Chapter 2 provides an overview of the current legislation and the provisions of the bill, and Chapter 3 outlines the key issues raised in submissions provided by stakeholders.

9 The Hon. Darren Chester, MP, Minister for Infrastructure and Transport, Media Release, *Call for comment on proposed coastal shipping reforms*, 21 March 2017.

Chapter 2

Overview of the bill

Schedules

2.1 Schedule 1 contains the main amendments proposed by the bill. These amendments relate to the Coastal Trading Act.

2.2 Schedule 2 contains amendments to the *Occupational Health and Safety (Maritime Industry) Act 1993* and the *Seafarers Rehabilitation and Compensation Act 1992*.

Proposed changes to licensing system

2.3 The bill proposes a number of changes to the current licensing system for coastal trading. The following section provides a brief overview of the current system.

Three-tier system

2.4 The Coastal Trading Act established a three-tier licensing system for coastal trading, General Licence (GL), Temporary Licence (TL) and Emergency Licence (EL).¹ Owners of foreign vessels holding licences issued under Part VI of the *Navigation Act 1912* (as at 30 June 2012) were provided for through a fourth category of licence – a Transitional General Licence (TGL).²

General Licence

2.5 A GL is available to vessels on the Australian General Shipping Register (AGSR) and provides unrestricted access to engage in coastal trading in Australian waters for a period of five years. GL holders are able to compete for trade on the Australian coast and the licence is "intended to maximise the use of vessels registered in the Australian General Shipping Register in coastal trading".³

2.6 The Department of Infrastructure and Regional Development (DIRD) noted that under a GL, each seafarer working on the vessel must be an Australian citizen, permanent resident, or hold a visa with appropriate work rights. The vessel must also continue to be registered on the Australian General Shipping Register to hold a GL.⁴

1 Department of Infrastructure and Regional Development, *Submission 2*, p. 2.

2 Transitional General Licences were continued in force by the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012*. It is noted that applications for this licence type are no longer accepted.

3 Department of Infrastructure and Regional Development, *Submission 2*, p. 2.

4 Department of Infrastructure and Regional Development, *Submission 2*, p. 2.

Transitional General Licence

2.7 A TGL is available to eligible vessels that held a licence under the previous arrangements in place under Part VI of the *Navigation Act 1912*, and provides the vessel it is issued to the same rights as a GL. A TGL is intended to assist ships operating under the former arrangements to transition to Australian registration. It is issued for a period of five years and may be renewed once.⁵

Temporary Licence

2.8 A TL may be granted to a shipper, or the owner, charterer, master or agent of a vessel registered on the Australian International Shipping Register (AISR) or under a law of a foreign country. It provides restricted access to engage in specific Australian coastal trading voyages over a 12 month period.

2.9 Applications for a new TL must include a minimum of five voyages. For cruise shipping, this means five 'port to port' journeys, rather than five stops on a single ticket. The same requirement applies to cargo, and means that a licence is required for each 'port to port' cargo movement conducted by a vessel.⁶

2.10 TLs can be varied after they are issued, to add additional voyages or amend the details of voyages that have already been authorised (for example to vary departure or arrival dates, the number of passengers, or the amount of cargo to be carried). DIRD provides all GL holders with information about all applications and allows them to provide notice that a vessel with a GL is available to conduct any of the notified voyages. This triggers a mandatory consultation process between the shipper and the GL holder that may be arbitrated by DIRD.⁷

2.11 DIRD noted that this is a competitive process, and voyages are not automatically granted to Australian operators. A decision is made by the Minister (or the Minister's delegate) and a challenge does not guarantee that the TL will be rejected.

2.12 It is rare that applications are contested – and no licences have been contested in the past 22 months. However, given the fact that a licence may not be approved, the current process reduces productivity and increases uncertainty, particularly because the applicant is not able to load cargo in the mandated 'consultation' period.⁸

5 Department of Infrastructure and Regional Development, *Submission 2*, p. 2.

6 Department of Infrastructure and Regional Development, *Submission 2*, p. 3.

7 Department of Infrastructure and Regional Development, *Submission 2*, p. 3.

8 Department of Infrastructure and Regional Development, *Submission 2*, p. 3.

Emergency Licence

2.13 An EL may be granted to a shipper, or the owner, charterer, master or agent of a vessel registered in the AGSR, the AISR or under the law of a foreign country to respond to 'significant national emergencies' (as outlined in the Regulations).

2.14 An EL is issued for a period of no more than 30 days and allows an applicant to respond to a specific emergency. An EL holder must provide details of each aspect of the intended voyages – including the reasons why the voyages cannot be undertaken by a vessel authorised to engage in coastal trading under a GL. DIRD noted that no EL has been applied for since the commencement of the Coastal Trading Act.⁹

Provisions of the bill – Schedule 1

2.15 The following section of the report provides an overview of the more significant amendments contained in Schedule 1 of the bill, as detailed in the EM.¹⁰

Definition - 'acceptable tolerance limits'

2.16 Item 5 amends the definition of 'acceptable tolerance limits' in relation to cargo or passengers authorised to be carried on a vessel under a TL. The amended definition of acceptable tolerance limits is not more than 200 per cent more, or 100 per cent less, than the volume of cargo or number of passengers authorised to be carried under a TL. The tolerance limits have been increased from not more than 20 per cent more or less of the authorised cargo or number of passengers.

2.17 The EM provides the following scenario as an example of how these tolerance limits will operate in practice:

A temporary licence is approved for the agent of vessel A to transport four shipping containers from Newcastle to Melbourne for a customer. If the order is changed, and the customer wants to send five shipping containers instead of four, the previous tolerance limits meant that the agent of vessel A would have to apply for a variation to their temporary licence to allow the carriage of the additional container. The amended tolerance limits in Item 5 would negate the need for an application to vary the temporary licence for vessel A's voyage, because vessel A could take up to 12 containers without needing to apply for a variation.¹¹

9 Department of Infrastructure and Regional Development, *Submission 2*, p. 3.

10 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, pp 1-16.

11 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 4.

2.18 Item 6 amends the definition of 'acceptable tolerance limits' in relation to loading dates from 5 days to 30 days before or after the loading date authorised on a TL.

2.19 The EM notes that 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.

Definition - 'docked for service'

2.20 Item 7 inserts a definition of 'docked for service' into Subsection 6(1). Under the bill, a vessel is docked for service if it is:

- in dry-dock; or
- docked for maintenance, repairs, cleaning or painting and not engaged in a voyage.

2.21 The EM notes that the definition of 'docked for service' is required as TL holders will be able to dock their vessel for service and be afforded the statutory presumption against importation by Section 112 of the Coastal Trading 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).¹²

Definitions - 'emergency licence' and 'energy security situation'

2.22 The category of ELs is being removed from the Coastal Trading Act under Item 8, which repeals the definition of 'emergency licence'. It is noted that TLs will be available in emergency situations (as per Item 21).

2.23 Item 9 repeals the definition of 'energy security situation' detailed at Subsection 6(1A) (see Item 16). The EM notes that TL variations will be available in emergency situations (see Item 21).

Definition – for the 'IMO number' of a vessel

2.24 Item 10 inserts a definition for the 'IMO number' of a vessel. IMO numbers are the numbers assigned to a vessel by the International Maritime Organization (IMO). A definition for IMO numbers is required at Subsection 6(1) as all TL holders will be required to include a vessel's IMO number in TL applications where known (see Item 23), in voyage notifications (see Item 47) and in all voyage reports (see Item 50).

12 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 5.

2.25 The EM notes that the current Coastal Trading Act does not require the provision of a vessel's IMO number for a TL application, voyage notification, or voyage report. It is also noted that the requirement to provide an IMO number adds no burden to industry and it is considered a key identifier that could be useful to the DIRD and other Commonwealth agencies undertaking compliance activities.¹³

Definitions – 'offshore facility', 'offshore industry vessel' and 'port'

2.26 Item 12 inserts a definition for an 'offshore facility'. The definition given is the same as that in the *Maritime Transport and Offshore Facilities Security Act 2003*. The inclusion of this definition is required because of Item 18, which will extend the coverage of the Coastal Trading Act to allow ships transporting liquid fuel products from offshore facilities to the mainland to be covered by coastal trading licences.

2.27 Item 13 amends the definition of an 'offshore industry vessel' to ensure that offshore industry vessels engaged in coastal trading as defined at paragraph 7(1)(d) (see Item 18) are covered by the Coastal Trading Act. All other offshore industry vessels will remain excluded from coverage by Section 10.

2.28 Item 14 amends the definition of a port to include a reference to Subsection 6(3), which clarifies how the Coastal Trading Act determines if a port is in a state or territory (see Item 17).

Definition – 'voyage'

2.29 Item 15 amends the definition of a voyage to reflect the changes made to Subsection 7(1) by Item 18. Item 15 also extends the definition of a voyage to include voyages that commence from and conclude at the same port.

2.30 The EM notes that the purpose of this amendment is to open the coastal trading regime to 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 Coastal Trading Act.¹⁴

2.31 A declaration under Section 12 of the Coastal Trading Act allows vessels engaged in intrastate voyages to be covered by coastal trading licences, thereby being afforded protection from importation by Section 112 of the Act.

Definition – 'energy security situation'

2.32 Item 16 repeals Subsection 6(1A), which detailed the definition of an 'energy security situation', which allowed an application to vary existing voyages in the

13 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 5.

14 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 6.

specific circumstances of such a situation. Subsection 6(1A) prescribed that an energy security situation exists if a vessel is carrying liquid fuel on a voyage authorised by a TL, and there are special circumstances (as prescribed by the Regulations) that require the vessel to unload liquid fuel at a port not authorised by the licence. The Regulations prescribe very specific circumstances for an energy security situation, including shortfalls in supply from overseas, shutdowns of refineries, failure of energy supply to a refinery, unsuitable fuel, or a severe weather event.

2.33 Subsection 6(1A) and its interaction with the regulations has been found to be overly restrictive, and not sufficiently flexible to allow for the loading and unloading of fuel in circumstances not prescribed by the regulations but which may nonetheless threaten energy security. Because Subsection 6(1A) only applies to vessels that are already engaged on a voyage authorised by a TL, and are already carrying liquid fuel, it precludes the rapid authorisation of a vessel to engage in coastal trading in genuine energy security situations.

2.34 The EM notes that, along with the repeal of Subsection 6(1A), the Minister will be provided with the flexibility to respond quickly to energy security situations through the mechanism of granting a TL in an emergency situation (see Item 21).

Clarity in determining whether a port is in a state or territory

2.35 Item 17 inserts a subsection to provide clarity on how the Coastal Trading Act determines if a port is in a state or territory. Subsection 6(3) is intended to provide clarity that ports such as roadsteads,¹⁵ which are often connected with a state or territory but not strictly within its waters, can be considered to be 'in' a state or territory for the purposes of the Coastal Trading Act. A roadstead that has a demonstrable (although not necessarily physical) connection with a port within the waters of a state or territory can be considered to be 'in a state or territory' for the purposes of the Coastal Trading Act, even if the roadstead is not wholly within the limits of a state or territory.¹⁶

Definition – 'coastal trading'

2.36 Item 18 broadens the definition of 'coastal trading' to include vessels that transport liquid fuel product between offshore facilities and ports in states or territories where some or all of the fuel product is unloaded.

15 A roadstead is a body of water sheltered from rip currents, spring tides or ocean swell where ships can lie with reasonable safety at anchor. A roadstead can be an area of safe anchorage for ships waiting to enter a port (or to form a convoy); if sufficiently sheltered and convenient it can be used for transshipment (or transfer to and from shore by lighters) of goods and stores or troops.

16 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 7.

2.37 The EM notes that this will extend the reach of the Coastal Trading Act to include vessels undertaking voyages between Floating Product, Storage and Offtake (FPSO) units and Floating Storage Units (FSUs) and Australian ports. The lack of coverage of coastal trading licences for these movements has resulted in shipments of crude oil being sent to international refineries instead of Australian refineries for processing. The inclusion of certain voyages between FPSOs and FSUs (as defined by Item 18) is intended to support the use of Australian refineries where possible.¹⁷

Vessels undertaking intrastate voyages

2.38 Item 19 (Section 12(2)) provides that the Minister can declare in writing that the Coastal Trading Act applies to vessels undertaking intrastate voyages. Item 19 amends paragraph 12(2)(a) to specify that the Minister can make a declaration in relation to intrastate voyages where a vessel takes on board liquid fuel product from an offshore facility in a state or territory. This will allow the granting of declarations under Section 12 where a vessel takes on board liquid fuel from on offshore facility in a state or territory.

Voyage report process

2.39 Subsection 27(1) specifies the information that GL holders must include in voyage reports. The amendment in Item 20 requires that the details of voyages to transport liquid fuel from offshore facilities to ports in Australian states and territories be included in the information that GL holders provide.

Persons able to apply for a temporary licence to be used in an emergency situation

2.40 Item 21 amends Subsection 28(1) to include an additional subsection 28(1A), which permits certain persons such as owners, charterers, masters or agents of vessels, or shippers, to apply for a TL to be used in an emergency situation, as prescribed by the Regulations.

2.41 The EM notes that this item is required because the category of ELs has been removed from the Coastal Trading Act (see Item 54) and this new provision will allow for the expedited consideration of applications in certain emergency circumstances. It is intended that this amendment will make it easier for the Minister to respond promptly to emergency situations, including where the emergency relates to energy security. This licence will be valid for 65 days to allow sufficient time to respond to the relevant emergency.¹⁸

2.42 Item 31 specifies the required timeframes for Ministerial decisions on the granting of TLs in emergency situations.

17 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 7.

18 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 7.

Five-voyage minimum requirement for a temporary licence

2.43 Item 22 amends the number of voyages required to be specified on a TL application. Under the current regime, a TL cannot be obtained for a single voyage, and applicants must know in advance the details of at least five voyages. This makes the system impractical for some operators, for example international shipping companies, which might otherwise conduct coastal trade at the end of an international voyage to Australia before departing.

2.44 Item 22 allows an application for a TL to consist of a single voyage. The EM notes that in their feedback during the consultation process, shipping stakeholders were of the view that this change would improve flexibility for their operations.¹⁹

Temporary licences

2.45 Items 23, 24 and 25 relate to specific information that, under the new legislation will be required to be included in TL applications.

2.46 The following amendments also relate to the TL process:

Timeframes in which the Minister must decide applications for temporary licences

2.47 Item 31 amends the timeframes in which the Minister must decide applications for TLs to 10 business days for applications made under Subsection 28(1), and 3 business days for applications made under Subsection 28 (1A). It is intended that reducing the required time for the Minister to decide an application for a TL under Subsection 28(1) will provide additional certainty to the shipping industry and reduce the costs associated with time delays.²⁰

2.48 The EM notes that the insertion of the 3 day decision time for applications made under Subsection 28(1A) means that TL applications made for a vessel to engage in coastal trading in an emergency situation must be decided within the same timeframe that was previously specified for ELs under Subsection 66(4). Due to the proposed removal of the EL category at Item 54 – and the insertion of Subsection 28(1A) at Item 21 – it is necessary to specify a decision time for TL applications in emergency situations. This will allow a response to an emergency situation to occur in a timely manner, while still allowing a mandated consultation process to take place if required.²¹

19 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 8.

20 The current timeframes are: 15 business days for applications made under Subsection 28(1) and 7 business days for applications made under Subsection 28 (1A).

21 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, pp 9-10.

The length of time for which a temporary licence is valid

2.49 Subsection 35(1) details the length of time for which a TL is valid. Item 32 amends the subsection to insert a validity period for TLs granted in emergency situations. Under the amended Coastal Trading Act, TLs granted for non-emergency situations will be valid for 12 months, while TLs granted for emergency situations will be valid for 65 days.

The addition of new voyages and the variation of existing voyages

2.50 The amendments in Items 38 and 45 consolidate the addition of new voyages and the variation of existing voyages into one application to vary a TL, instead of having these two types of variations within separate subdivisions. Item 38 also clarifies that it is the 'holder of a temporary licence' that can apply to vary the licence, and not just any person. The EM notes that this amendment has been included to streamline the processes of the Coastal Trading Act.

Responsibility of the Minister to consult

2.51 Subsection 45(1) sets out the responsibility of the Minister to consult with certain persons in relation to applications to vary a TL. Item 41 amends Subsection 45(1) to remove references to energy security situation variations, which are being removed from the Coastal Trading Act (as per Items 9 and 16). It also amends Subsection 45(1) so that the Minister must only engage in consultation when an application to vary a TL relates to the carriage of people, cargo or liquid fuel from offshore facilities determined under the proposed Subsection 30(2).

2.52 The EM notes that, in practice, this will mean that if a TL holder wishes to vary their licence, and their cargo has not been determined by the Minister under Subsection 30(2), there will be no requirement for the Minister to consult on variations to the voyage. It is also noted that this is consistent with the intention of Item 29, which is to improve efficiency by limiting consultation to sectors where there is a genuine opportunity for Australian vessels to compete with foreign-flagged vessels.²²

Information temporary licence holders must include in voyage notifications

2.53 Section 61 specifies the information that TL holders must include in voyage notifications. Item 49 exempts TL holders from the voyage notification requirements listed in Subsection 61(1) when that information has already been provided as part of a TL application or an application to vary a TL.

2.54 The EM notes that, in practice, this means that if a TL holder has already provided complete and accurate information regarding voyages, and intends to

22 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 9.

undertake those voyages as specified in the TL, there is no need to provide a notification to the Minister.

2.55 The EM also notes that currently, voyage notifications must be lodged two business days before the loading date for a voyage, even when the details have not changed from the authorised voyage on the licence. In many cases, licence applications provide all of the information required by Section 61 and notification in those instances is considered redundant. It is proposed that changing this requirement (to only apply to voyages if there are changes to details that were previously provided in the application) will reduce the regulatory impost on industry.²³

Information temporary licence holders are required to include in voyage reports

2.56 TL holders are required to provide reports on voyages to the Minister in writing within 10 business days of a voyage being undertaken. Section 62 specifies the information TL holders are required to include in voyage reports. Item 50 amends Subsection 62(1) to include a vessel's IMO number in the list of information required to be included in voyage reports.

Use of temporary licence

2.57 Subsection 63(1) stipulates what elements the Minister should have regard to when considering whether a TL is being used in a way that circumvents the object of the Coastal Trading Act. Item 52 enables the Minister to have regard to the offshore facilities at which liquid fuel is taken on board.

People from whom the Minister may require additional information

2.58 The EM notes that, on occasion, the Minister may require additional information in order to decide an application for a TL, whether that application relates to a new TL, or a TL that has been varied to include a new voyage or voyages.

2.59 Subsection 77(1) specifies the people from whom the Minister may request additional information. Item 58 relocates a reference from Subsection 77(1) to Section 51, which relates to variation of a licence to include new matters. Item 58 replaces the reference to Section 51 with a reference to Section 43 to reflect the consolidation of TL variations under Items 38 and 45.

2.60 It is noted that the changes under Item 58 are required so that the Minister may continue to request further information from specified persons when an application has been submitted to vary a TL.²⁴

23 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 15.

24 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 14.

Right of review

2.61 Subsection 107(5) provides the right of review through the Administrative Appeals Tribunal for holders of GLs who have filed a notice in response to an application to vary a TL made under Section 51. The right of review is afforded for decisions by the Minister to grant the application under Section 55 (paragraph 107(5)(a)) and to have taken to have granted the application under Section 56 (paragraph 107(5)(b)).

2.62 The EM notes that Item 63 repeals this Subsection 107(5) and replaces it with a provision that references Sections 43 and 47 to reflect the consolidation of TL variations under Items 38 and 45, and the repeal of Subdivision D of Part 4. It is also noted that the changes under Item 63 are required so that the right of review continues to apply to the persons listed in Subsection 107(5) in regards to applications to vary TLs. A reference to Section 56 is no longer required as there is no longer an automatic grant provision for variation applications.²⁵

Ministerial power – consultation

2.63 Item 29 inserts Subsection 30(2), which gives the Minister the power to determine the kinds of cargo or passengers for which consultation with the persons listed in paragraph 30(1)(b) of the amended Coastal Trading Act must occur. This is intended to promote efficiency in the coastal trading regime and remove the need for unnecessary consultation where there are no relevant general licensed ships. The Determination is a Legislative Instrument.

2.64 The EM notes that there are currently no Australian ships operating across a number of sectors in Australian waters, such as oil or gas tankers. It is therefore inefficient and unnecessary to consult all GL holders for every TL application that is received. This amendment allows the Minister to designate cargo and passenger types where consultation must take place, thereby limiting consultation to those sectors where Australian vessels can provide competition to foreign flagged vessels. The EM argues that this reduces the impost and uncertainty caused to industry due to unnecessary consultation and allows for the more efficient consideration of licence applications.²⁶

New tolerance limits

2.65 Item 30 amends Subsection 34(3)(c) of the Coastal Trading Act to reflect the new tolerance limits (see Item 6). This provision will allow the Minister to have regard to whether passengers or cargo can be carried on the expected loading dates or

25 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 15.

26 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 9.

within 30 days before or after the relevant date when considering an application which has received one or more notices in response.

Information to be published on the Department's website

2.66 Subsection 35(2) provides that if the Minister grants an application for a TL, the Minister must cause certain information regarding the licence to be published on DIRD's website.

2.67 The EM notes that the amendment in Item 33 will ensure that the details of voyages to transport liquid fuel from offshore facilities must be included in the information that is published.²⁷

Amendment relating to 'docked for service'

2.68 Item 64 removes a reference to an EL as the category of EL is being removed from the Coastal Trading Act (see Item 54).

2.69 The EM notes that the amendment relating to 'docked for service' will allow for the statutory presumption against importation provided by Section 112 to extend to vessels that engage in dry-docking. This means that a vessel that is authorised to conduct a voyage under a TL will be able to dry-dock in Australia.²⁸

Application of amendments

2.70 Subitem 1 ensures that all the conditions for licences under the amended Coastal Trading Act will apply to any TL regardless of whether they were granted before, on, or after the commencement of the amended regime. Licences as varied are included in the operation of this section.

2.71 Subitem 2 ensures that this Schedule applies in relation to applications for a licence pending immediately before commencement of the new regime. As per Subitem 1, if these applications are granted, then the new law will apply to these licences.

2.72 Subitem 3 provides that the requirements for licence variation applications under the new law will apply in relation to any application made to vary a licence, regardless of when the licence was approved.

2.73 Subitem 4 provides that applications to vary a licence made under Sections 43 or 51 of the Coastal Trading Act that were pending immediately before the

27 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 10.

28 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 15.

commencement of the new law will be taken to be applications to vary a licence under Section 43 of the amended Coastal Trading Act.

2.74 The EM notes that, in practice, this means that applications for 'new matters' or 'authorised matters', which are pending at the time the amended Coastal Trading Act commences, will be treated as applications to vary a licence under Section 43 of the amended Coastal Trading Act.²⁹

2.75 Subitem 5 provides that applications for ELs under Section 64 of the Coastal Trading Act that are pending at the time of the commencement of the amended Coastal Trading Act will be taken to be applications for a TL made under Subsection 28(1A) of the new law.

Transitional provision

2.76 Item 66 provides a transitional arrangement to allow an EL that is in force immediately before the commencement of this Act to continue in force despite the repeal of Division 3 of Part 4.

Provisions of the bill – Schedule 2

Amendments to the Occupational Health and Safety (Maritime Industry) Act 1993

2.77 Item 1 removes a reference to an EL in the *Occupational Health and Safety (Maritime Industry) Act 1993* as the category of EL is being removed from the Coastal Trading Act (see Item 54 of Schedule 1).

2.78 Item 2 ensures that the paragraph has punctuation consistent with the repeal of paragraph 6(3A)(c) in the *Occupational Health and Safety (Maritime Industry) Act 1993*.

2.79 Item 3 removes a reference to an EL in the *Occupational Health and Safety (Maritime Industry) Act 1993* as the category of EL is being removed from the Coastal Trading Act (see Item 54 of Schedule 1).

Amendments to the Seafarers Rehabilitation and Compensation Act 1992

2.80 Item 4 removes a reference to an EL in the *Seafarers Rehabilitation and Compensation Act 1992* as the category of EL is being removed from the Coastal Trading Act (see Item 54 of Schedule 1).

2.81 Item 5 removes a reference to an EL in the *Seafarers Rehabilitation and Compensation Act 1992* as the category of EL is being removed from the Coastal Trading Act (see Item 54 of Schedule 1).

29 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, pp 15-16.

Chapter 3

Issues

Background

3.1 In March 2017, the Minister for Infrastructure and Transport, the Hon. Darren Chester, MP released the *Coastal Shipping Reform Discussion Paper*. The amendments contained in the bill were all detailed and explained in the discussion paper and stakeholder comment was sought on the proposed reforms. The discussion paper also detailed the Government's approach to coastal shipping reform and made clear that the proposed amendments were not intended to:

...make wholesale changes to the current regime, but rather retain its basic structure, while removing aspects which stakeholders had reported were unreasonably limiting, inflexible or onerous.¹

3.2 DIRD provided some of the background to the bill in its submission, and outlined some of the issues that have been impacting the coastal shipping industry for more than a decade.

3.3 It was noted, for example, that between 2004-05 and 2014-15 the volume of freight across Australia increased by around 55 per cent. During the same period, however, the shipping industry's share of Australian freight fell from approximately 25 per cent to around 17 per cent. It was also noted that between 2010 and 2030, Australia's freight task is predicted to increase by approximately 80 per cent. This is in contrast to coastal shipping, which is only forecast to increase by approximately 15 per cent.²

3.4 DIRD also observed that while successive governments have investigated ways to regulate coastal shipping with a view to increasing the number of Australian ships – in both the international and trading sectors – foreign ships continue to be necessary to meet the demand for shipping services, including in the coastal sector.³

3.5 It was also noted that that since the implementation of the current regulatory regime, and the establishment of the Australian International Shipping Register (AISR) in 2012:

- there have been no ships registered on the AISR; and

1 Department of Infrastructure and Regional Development, *Submission 2*, p. 5.

2 Department of Infrastructure and Regional Development, *Submission 2*, p. 4.

3 Department of Infrastructure and Regional Development, *Submission 2*, p. 4.

- there has been a continued decline in the number of Australian general licence vessels (and a decrease of 69 per cent in the carrying capacity of these ships).⁴

Consultation

3.6 DIRD pointed to feedback it has received from both users and stakeholders regarding the current regulatory regime. Stakeholders noted that the regulation of coastal shipping has created a range of administrative issues which have an impact on shipping companies (and the Australian businesses that use coastal shipping), resulting in a significant regulatory burden. DIRD argued that this has prevented foreign shipping companies from being able to participate in coastal shipping – "even where there are no Australian vessels available to carry the goods".⁵

3.7 DIRD also advised that in its consultations with stakeholders (undertaken in 2016 and 2017):

...concerns were raised about the current requirement to apply for voyages in groups of five or more, [the] risks associated with the variation of voyages, and the inefficient process for providing opportunity to Australian operators to compete for cargo or passenger carrying opportunities even where no such Australian operators existed. Other concerns related to the existing tolerance provisions (date, volume) and the requirement to vary already authorised voyages in situations where the strict tolerance provisions could not be met.⁶

3.8 The committee was told that during its consultations, stakeholders had argued that if the Government was not planning to proceed with wholesale reform of Australia's cabotage rules, the Coastal Trading Act "should be amended to reduce red tape and remove the inflexibility within the current framework".⁷ DIRD reported that they had been informed by stakeholders of:

- **The cost of shipping** – for some dry bulk commodities, the cost of shipping the final product around Australia is now the same as shipping the product from overseas to Australia. For example, the shipment of gypsum from Thailand is \$10 per tonne cheaper than shipping it around the Australian coast. This additional cost is a determining factor in choosing an international ship over and Australian flagged vessel when shipments carried around the Australian coast constitute tens of thousands of tonnes.
- **Delays due to consultation requirements** – every application to transport fuel around the coast remains subject to a one or two business

4 Department of Infrastructure and Regional Development, *Submission 2*, p. 4.

5 Department of Infrastructure and Regional Development, *Submission 2*, p. 4.

6 Department of Infrastructure and Regional Development, *Submission 2*, p. 4.

7 Department of Infrastructure and Regional Development, *Submission 2*, p. 4.

day delay due to the 'notice in response' requirements of the Coastal Trading Act. This is despite the fact that there are no Australian registered crude oil or petroleum tankers with a GL available to contest TL applications. This has resulted in a situation where, since 1 June 2016, businesses have spent more than 446 days waiting for consultation with a GL holder that does not exist.

- **Consultation for temporary licence voyages carrying Other Bulk Liquids** – in the 2016-17 financial year, no GL or TL vessels reported carrying any 'Other Bulk Liquids'. Despite this, in the same period, there were 200 days of consultation for TL voyages carrying 'Other Bulk Liquids', including sulphuric acid, ethanol and molasses.⁸

3.9 DIRD argued that given the feedback provided by stakeholders, it is clear that users of coastal shipping services – particularly in the manufacturing, petroleum and primary industry sectors – support further deregulation. It was also argued that the majority of user and stakeholder feedback to the department indicated that the Government's "proposal to address administrative issues associated with the current regime will reduce regulatory burden".⁹

3.10 In its submission, the Maritime Union of Australia (MUA) argued that despite the consultation undertaken prior to the introduction of the new legislation, the bill "has ignored key proposals put forward by the industry, via exhaustive meetings with stakeholders as part of an industry Green Paper".¹⁰ Further, it was argued that:

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.

...

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.¹¹

Response to the bill

3.11 Submissions provided by industry stakeholders expressed a range of views regarding the proposed new legislation.

8 Department of Infrastructure and Regional Development, *Submission 2*, pp 4-5.

9 Department of Infrastructure and Regional Development, *Submission 2*, p. 5.

10 Maritime Union of Australia, *Submission 18*, p. 5.

11 Maritime Union of Australia, *Submission 18*, p. 5.

3.12 Supporters of the bill submitted that the new legislation does not represent significant change, but proposes a series of amendments which have been designed to reduce red tape and simplify the administration of the regime. It was argued that the benefits of the changes will include reduced costs, increased efficiencies and a reduction in the administrative burden for both industry and government.¹²

3.13 The Australian Industry Group (Ai Group) represents a number of Australian companies that use coastal shipping to transport raw materials, components and finished products between Australian ports. The Group submitted that the bill provides "much needed repair and flexibility to the current coastal trading regulatory regime",¹³ and addresses Australian businesses' concerns that the shipping of domestic product between Australian ports has "become uncompetitive and restrictive". Further, it argued that:

The current regime, regulated by the *Coastal Trading (Revitalising Australian Shipping) Act 2012*, has led to significant increases in shipping costs to Australian companies and a greater reliance on road transport and rail.

The bill will increase access of Australian businesses to the services of foreign ships capable of transporting domestic cargo. This will increase flexibility in the coastal shipping trade. It will provide important economic benefits to the Australian economy and allow for greater movement of Australian domestic cargo.¹⁴

3.14 The Australian Aluminium Council (AAC) submitted that the current regulations on coastal shipping have proved "ineffective, inflexible and costly to industries that rely on shipping services".¹⁵ It was noted that, under current regulations, when applying for a TL, there is a requirement to apply for a minimum of five voyages and to lock-in loading dates and ports in advance. As a result of the current system, there have been occasions when the supply of alumina at some smelters has reached critically low levels. The AAC indicated that:

...this type of situation would normally be addressed through adjustment of the dates and shipping voyage routes through normal commercial negotiations, but this is unworkable under the current regime.¹⁶

12 See, for example, Department of Infrastructure and Regional Development, *Submission 2*, p. 2, Australian International Marine Export Group – Superyacht Australia, *Submission 3*, Shipping Australia Limited, *Submission 6*, Maritime Industry Australia Limited, *Submission 14* and the Australian Industry Group, *Submission 17*.

13 Australian Industry Group, *Submission 17*, p. 3.

14 Australian Industry Group, *Submission 17*, p. 3.

15 Australian Aluminium Council, *Submission 7*, p. 3.

16 Australian Aluminium Council, *Submission 7*, p. 3.

3.15 In supporting the proposed amendments, the AAC argued that they will provide "some reduction in the regulatory burden for shipping users and a resultant increase in the efficiency of the coastal shipping regime".¹⁷

3.16 The Ai Group noted that the bill proposes "modest but important changes to the licensing system for foreign ships for the purpose of domestic cargo around Australia".¹⁸ The Ai Group explained that currently, the Coastal Trading Act focusses primarily on the involvement of Australian ships in coastal trading. While supportive of the efforts made by successive governments to revitalise the Australian shipping industry, it also argued that an appropriate balance needs to be struck, and that this balance:

...must take into account the interests of Australian companies (shipping companies as well as companies which use shipping to transport their goods), Australian workers (those employed by shipping companies and those employed by the users of shipping) and Australian consumers (who are forced to pay the higher prices associated with increased transport costs).¹⁹

3.17 The Ai Group argued that the changes proposed by the bill do strike an appropriate balance and will go some way to addressing the concerns of Australian businesses, which have been finding the shipping of domestic product between Australian ports increasingly restrictive and costly.²⁰

3.18 Submissions received from stakeholders opposed to the bill, noted that their opposition stems, in part, from their disappointment in the Coastal Trading Act itself, which was introduced in 2012. Submitters argued that the Coastal Trading Act did not "contain any legislative requirement that would 'revitalise' the ownership or operation of ships by Australian companies and the employment of Australian workers".²¹

3.19 Further, it was argued that Australian flag shipping operated by Australian seafarers has actually declined since the introduction of the 2012 legislation. It was noted, for example, that the last four remaining petroleum tankers have been removed from the coast since the introduction of the Coastal Trading Act.²²

3.20 The Australian Institute of Marine and Power Engineers (AIMPE)²³ observed that it is widely accepted across the industry that the 2012 legislation has "failed to

17 Australian Aluminium Council, *Submission 7*, p. 3.

18 Australian Industry Group, *Submission 17*, p. 4.

19 Australian Industry Group, *Submission 17*, p. 4.

20 Australian Industry Group, *Submission 17*, p. 4.

21 Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, p. 3.

22 Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, p. 5.

23 The Australian Institute of Marine and Power Engineers (AIMPE) is a professional body and registered organisation which represents qualified marine engineers throughout Australia.

revitalise the Australian coastal shipping sector" and argued that the proposed bill has the potential to actually "accelerate the decline even further and spread its adverse impacts more widely".²⁴

3.21 The AIMPE submitted that the Government should reconsider its approach to the coastal shipping industry and adopt measures that would increase the number of Australian-registered ships – and as a result, the number of Australian deck and engineer officers.²⁵

3.22 The AIMPE also argued that the original legislation actually made it easier to replace tax-paying Australian ships and workers with tax-free foreign ships and workers, registered under the law of a foreign power and thus not subject to most Australian laws – including taxation. Further, it suggested that the new bill actually streamlines and accelerates a pattern of facilitating tax-free foreign shipping and displacing tax-paying Australian shipping.²⁶

3.23 AIMPE argued that for there to be any increase in the number of ships in the Australian flag shipping fleet, a different approach would be needed. The AIMPE recommended amendments to the *Shipping Registration Act 1981* which would require all commercial vessels regularly operating in Australian water be required to register in Australia. AIMPE argued that:

Currently that Act requires vessels **owned** by Australian entities to be registered in Australia but as it makes NO legislative requirement that a ship must be registered in order to regularly operate in Australia, this Act effectively encourages companies to remove their ships from the Australian ship-register and instead register then in a foreign Flag of Convenience Tax-haven[s] like Singapore, Panama etc.

They avoid registering in Australia so that by exploiting the Temporary Licence system they can avoid Australian company Tax.

Requiring vessels that regularly operate in Australian waters to register under the *Shipping Registration Act 1981* would lead to a substantial increase in the number of Australian flag ships and would increase the employment of Australian Deck and Engineer Officers.²⁷

Specific issues

3.24 In addressing the various amendments proposed by the bill, a number of submitters addressed the proposed legislation and the decline of Australia's shipping industry in a general sense. There were several issues about which stakeholders held specific concerns, however, including:

24 Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, p. 5.

25 Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, p. 12.

26 Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, p. 3.

27 Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, p. 5.

- the definition of 'acceptable tolerance limits';
- vessels dry-docking and docked for service;
- the definition of 'voyage';
- the five-voyage minimum requirement for a TL; and
- the responsibility of the Minister to consult.

'Acceptable tolerance limits' – Item 5

3.25 Item 5, which amends the definition of 'acceptable tolerance limits', was supported by a number of stakeholders.²⁸

3.26 A number of stakeholders were opposed to this amendment,²⁹ including the MUA which argued that a consequence of this amendment 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.³⁰

3.27 The Australian Institute of Petroleum (AIP) indicated its support for this amendment which will see the tolerance limit for loading dates extended to 30 days, and the removal of the volume tolerance provisions in their entirety. It was argued that this approach "would better reflect the market reality which is constantly changing and requiring regular re-assessment".³¹

Vessels dry-docking and 'docked for service' – Item 7 and Item 64

3.28 As noted in the previous chapter, Item 7 inserts a definition of 'docked for service' into Subsection 6(1). Under this amendment, TL holders will be able to dock their vessel for service and be afforded the statutory presumption against importation by Section 112 of the Coastal Trading Act.

3.29 Under Item 64, the reference to an EL is removed, as this category is being removed from the Act.

28 See for example, Shipping Australia Limited, *Submission 6*, p. 11, Australian International Marine Export Group – Superyacht Australia, *Submission 3*, [p. 6], Australian Aluminium Council, *Submission 7*, p. 3, Cement Industry Federation, *Submission 16*, p. 3 and Business Council of Australia, *Submission 19*, p. 1.

29 See for example, Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, Mr E J Wilson, *Submission 4* and Australian Maritime Officers Union, *Submission 11*.

30 Maritime Union of Australia, *Submission 18*, p. 9.

31 Australian Institute of Petroleum, *Submission 15*, p. 6.

3.30 The amendments are proposed to remove the financial disincentive that customs importation represents, and have the aim of encouraging ship owners and operators to use Australian dry-docking services.

3.31 Cruise Lines International Association Australasia (CLIA) observed that in recent years, Customs has adopted the view that the entry of a ship into a dry-dock facility triggers importation. CLIA noted that "this is despite the fact most cruise ship dry-docks last only a short period of 2-3 weeks before the ship departs".³²

3.32 One of the consequences of importation for cruise ship operators is that the Maritime Crew Visas of the crew are rendered invalid. It was noted that, given there are frequently over 1000 crew on a large cruise ship, the cost, time and administrative requirements involved in applying for new crew visas (for such a short period of time) generally makes it uneconomic to dry-dock in Australia. This has resulted in a large number of cruise ship dry-docks choosing to relocate to international alternatives – including Singapore – over recent years. It was noted that with each dry-dock frequently involving an expenditure of more than \$15 million, the loss to the Australian economy (and the loss of employment) is significant.³³

3.33 The CLIA indicated that while it agrees with the bill's intention to remove the financial disincentive that customs importation represents to dry-docking in Australia, it has concerns that the bill:

...proposes a 'fix' for this issue by the insertion of dry-docking in Section 112 of the Act. However, this solution will not apply to exempted cruise ships which still face the importation issue. Without a solution, CLIA considers it likely that large cruise ship operators will continue to dry-dock outside Australia.³⁴

3.34 CLIA submitted that this particular issue needs to be solved by amendment of the Customs legislation, "to ensure that cruise ships in short term or emergency dry-dock are not required to be imported".³⁵

3.35 In supporting this amendment, Superyacht Australia noted that "refit and repair work drives a lengthy supply chain, creates jobs and has significant economic returns for Australia".³⁶ Ports Australia also observed that the proposed changes are a "good first step in reducing the regulatory burden" on vessels undertaking voyages on the Australian coast.³⁷ It also acknowledged that the proposal to allow for dry-docking

32 Cruise Lines International Association Australasia, *Submission 10*, p. 5.

33 Cruise Lines International Association Australasia, *Submission 10*, p. 5.

34 Cruise Lines International Association Australasia, *Submission 10*, p. 6.

35 Cruise Lines International Association Australasia, *Submission 10*, p. 6.

36 Australian International Marine Export Group – Superyacht Australia, *Submission 3*, [p. 5].

37 Ports Australia, *Submission 8*, p. 2.

without being subject to the Customs Act, is "pragmatic and will improve the coastal regulatory framework".³⁸

3.36 The AIMPE recognised that this amendment could benefit the ship repair sector. However, it did raise concerns about the consequences of a vessel not being regarded as imported – specifically, that the vessel would 'escape' the asbestos prohibition in the Customs regulations. It also argued that this amendment places in doubt the application of state OHS and WHS laws in relation to exposure to asbestos containing materials.³⁹

3.37 The MUA advised that, given this amendment aims to encourage vessel owners and operators to use Australian dry-docking services, it was not necessarily opposed to the provision. The MUA was of the view, however, that the provision "must be carefully defined to prevent abuse".⁴⁰

Definition – 'voyage' – Item 15

3.38 Under Item 15, it is proposed to amend the definition of a 'voyage' to reflect the changes made to Sub-section 7(1) by Item 18. Item 15 would also extend the definition of a voyage to include voyages that commence from, and conclude at, the same port. The purpose of this amendment is to open the coastal trading regime to chartered recreational vessels that typically embark and disembark the same port, and wish to apply to the Minister for a declaration under Section 12 of the Coastal Trading Act.⁴¹

3.39 The MUA expressed concerns that this amendment would cover chartered recreational vessels that frequently embark and disembark at the same port, and argued that this amendment would, in effect, also provide protection from customs importation requirements and indefinite use of Maritime Crew Visas. The MUA voiced its strong opposition to the extension of the definition of 'voyage' and submitted that:

It has wide ranging implications for other types of vessel operations on intra-state voyages such as bunkering, transshipment 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.⁴²

3.40 However, this amendment was welcomed by a number of other stakeholders who agreed that this change would provide business with greater flexibility in its use

38 Ports Australia, *Submission 8*, p. 2.

39 Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, p. 11.

40 Maritime Union of Australia, *Submission 18*, p. 10.

41 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 6.

42 Maritime Union of Australia, *Submission 18*, p. 8.

of freight services and shipping operations and would be consistent with international experience.⁴³

Five-voyage minimum requirement for a temporary licence – Item 22

3.41 As previously noted, the amendments contained in the bill propose to remove the five-voyage minimum requirement to apply for a TL. Item 22 amends the number of voyages required to be specified on a TL application and allows an application for a TL to consist of a single voyage.

3.42 Under the current system, a TL cannot be obtained for a single voyage, and applicants must know in advance the details of at least five voyages. The EM notes that this requirement "makes the system impractical for some operators, for example international shipping companies, which might otherwise conduct coastal trade at the end of an international voyage to Australia before departing".⁴⁴

3.43 The Regulation Impact Statement (RIS) for the bill also highlighted that a number of stakeholders had raised concerns regarding the nature of the licence system. In particular, the minimum voyage number limitation. It noted that this requirement:

...also tends to impact Australian businesses seeking to use spot hire (tramp traders), or other vessels under contracts of affreightment, at short notice for passengers or cargo. As opposed to liner shipping, tramp ships trade on the spot market with no fixed schedule or itinerary of ports of call.⁴⁵

3.44 Shipping Australia Limited (SAL) indicated its support for the removal of the 'five voyage minimum' requirement for a TL, but suggested that the relationship between a 'temporary licence' and the new 'single voyage approval' and subsequent approvals may need further clarification. Specifically, SAL questioned whether the 'temporary licence' and a 'single voyage approval' will be given separate approval and sought clarification about the definition of 'short notice'.⁴⁶

3.45 Superyacht Australia, the peak body for the superyacht industry, told the committee that the current legislation, which was designed for the commercial shipping industry, is not workable for the superyacht industry. Superyacht Australia noted that a Coastal Trading Licence – the 12 month temporary coastal trading license under the current legislation – had been suggested as a possible solution. It was

43 See for example, North Star Cruises Australia, *Submission 12*, Australian Trade and Investment Commission, *Submission 9* and Australian Industry Group, *Submission 17*.

44 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 8.

45 Department of Infrastructure and Regional Development, *Regulation Impact Statement, Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, September 2017, p. 10.

46 Shipping Australia Limited, *Submission 6*, p. 11.

argued, however, that the 'five voyage minimum' and the definition of 'voyage' place clear restrictions on companies conducting yard or refit work between charters.⁴⁷

3.46 Master Mariner, Mr E J Wilson, raised concerns about removing the requirement for foreign vessels to comply with the five voyage minimum. It was noted that, currently, under the five voyage arrangement, foreign ship owners and shippers are required to show that there is sufficient volume of business to justify a TL. Mr Wilson submitted that this amendment will open the Australian coast to any foreign ship that can apply for a TL to trade for single or continuous voyages, and argued that the proposed changes:

...only serve the interests of foreign flag vessels, invariably flag of convenience vessels chosen by shippers for the cheapest crews and rates and whose interests are opposed to the Australian shipping industry and against the national interest.⁴⁸

3.47 The Company of Master Mariners of Australia indicated that it is opposed to the removal of the five voyage minimum, arguing that removal of the five voyage minimum will mean that any foreign ship can apply for a TL for a single voyage, which will destroy any protection for local shipping. Further, it was noted that:

At least under the five voyage arrangement foreign shipowners are required to show that there is sufficient volume of business to justify a temporary licence.⁴⁹

3.48 The MUA also noted its opposition to the removal of the current five-voyage minimum requirement to apply for a TL. It argued that the removal of the five-voyage minimum is "likely to increase the number of TLs granted, when such work could be done by Australian crewed ships, operating under a GL".⁵⁰ It was also argued that:

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 in this trade.⁵¹

3.49 However, DIRD told the committee that during consultations, one of the key administrative burdens regularly raised by stakeholders was the requirement under the current legislation to apply for a minimum of five voyages. DIRD noted that:

We have a range of stakeholders, companies, who would like to move goods for which their needs are infrequent and therefore ships cannot actually allocate what those five voyages will be for and therefore are unable to apply for a licence. We have had situations in that particular

47 Australian International Marine Export Group Ltd – Superyacht Australia, *Submission 5*, [p. 5.]

48 Mr E J Wilson, *Submission 4*, [p. 1].

49 The Company of Master Mariners of Australia, Sydney Branch, *Submission 13*, [p. 1].

50 Maritime Union of Australia, *Submission 18*, p. 7.

51 Maritime Union of Australia, *Submission 18*, p. 7.

circumstance where that has led to companies having to move goods by truck, because they are not able to move them on a ship.⁵²

Responsibility of the Minister to consult – Item 41

3.50 As noted in the EM, there are currently no Australian ships operating across a number of sectors in Australia – this includes oil or gas tankers. Given this situation, it has become both inefficient and unnecessary to consult all GL holders for every TL application that is received.⁵³

3.51 Under amendments proposed in Item 41, if a TL holder wishes to vary their licence – and their cargo has not been determined by the Minister under Subsection 30(2) – the Minister would no longer be required to consult on variations to the voyage. The EM argued that the amendment would reduce the inefficiency and uncertainty caused by unnecessary consultation and lead to the more efficient consideration of licence applications.⁵⁴

3.52 The MUA made clear its support for Section 30 of the Coastal Trading Act, which requires the Minister to publish details of relevant TL applications on DIRD's website within two business days following the receipt of an application. The MUA submitted that in removing this safeguard, the Minister would have the power to determine which kinds of cargo or passengers must engage in consultation with the persons affected. Further, it argued that:

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 [the] 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.⁵⁵

3.53 The AIMPE also expressed concern that it would no longer be mandatory for the Minister to consult. The AIMPE indicated its strong opposition to any change to the level of information that is provided to industry stakeholders, noting that this represents a reduction in the transparency that was introduced in the 2012 legislation. Further, it was argued that this amendment would take the industry back to the days when minimal information was provided about single voyage permits and continuing voyage permits for foreign shipping in coastal trades.⁵⁶

52 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Committee Hansard*, 23 May 2017, p. 116.

53 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 9.

54 Explanatory Memorandum, *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017*, p. 9.

55 Maritime Union of Australia, *Submission 18*, p. 7.

56 Australian Institute of Marine and Power Engineers (AIMPE), *Submission 1*, p. 9.

3.54 DIRD told the committee that in practical terms, the proposed streamlining of the licensing process (where no GL vessels are available) would mean that foreign-flagged vessels would be allowed to carry petroleum products – particularly as there are no Australian-flagged vessels capable of doing so. DIRD advised that each time a ship wants to carry goods, that voyage – no matter what the circumstances – is advertised to all GL holders. The consultation currently occurs even when there is an awareness that there is no Australian ship to carry those goods. DIRD noted that this amendment would – "only in the circumstances where we know that there are no Australian ships to carry those goods – remove the need for us to go out and advertise it to all of the general licence holders".⁵⁷

Committee view

3.55 The committee acknowledges the concerns raised by those who oppose provisions in the bill. However, the committee notes that many of these concerns stem from an expectation that the Coastal Trading Act would 'revitalise' the Australian shipping industry.

3.56 While the committee recognises that there is a wider debate about coastal shipping in Australia, reflected in a series of reviews into Australia's shipping sector, the committee was specifically tasked with considering the provisions of the bill.

3.57 During the DIRD consultation process, it became clear that while stakeholders and users of coastal shipping services, particularly in the manufacturing, petroleum industry sectors, supported the Australian shipping sector, they also recognised the need for further deregulation.

3.58 The committee notes that the bill does not propose substantial changes to the current coastal trading regime. It does, however, propose a number of amendments which would reduce red tape and simplify the administration of the coastal trading regime. The committee also notes that the proposed changes will result in decreased costs and a reduction in the administrative burden – both for industry and the Government. The committee therefore supports the passing of the bill.

Recommendation 1

3.59 The committee recommends that the bill be passed.

57 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Committee Hansard*, 23 May 2017, p. 118.

Senator Barry O'Sullivan

Chair

Additional Comments from Senator the Hon. Eric Abetz

1.1 The modest amendments in the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 are welcome but do not go far enough.

1.2 Of all the states, Tasmania has the most to gain from our Free Trade Agreements. But importing nations and mainland states are price sensitive. Every extra dollar per container will count against us as we compete with other states on both the Australian and world markets.

1.3 The Labor/Green changes to placate the extreme Maritime Union of Australia in the Coastal Trading (Revitalising Australian Shipping) Act 2012 have had a devastating and foreseeable impact. Rather than encourage and promote Australian shipping, these changes have stymied growth in the number of ships servicing Australian waters, whether foreign or Australian. The number of major trading vessels on our coast has continued to decline. Further impacts include:

- (a) Between 2000 and 2012, shipping's share of Australian freight fell from 27% to just under 17%, while the volume of freight across Australia actually grew by 57%;
- (b) Over 2010-30, Australia's overall freight task is expected to grow by 80%, but coastal shipping will only increase by 15% unless we act now;
- (c) There aren't enough ships to move our cargo and for some cargoes there aren't any Australian ships at all. Take for instance containers and cars. There are no Australian container ships, and with the exception of the Bass Strait Ferries, there are no Australian car carriers;
- (d) a substantial increase in the freight rates experienced by shipping users – e.g. Tasmanian company Bell Bay Aluminium recorded a 63 per cent increase in freight costs in one year;
- (e) a 63 per cent reduction in the deadweight tonnage (or capacity) of major Australian-flagged vessels with coastal licences from 2011-12 to 2013-14;
- (f) around 1,000 extra administration hours per year on the industry to meet the red tape of the scheme, as estimated by the Business Council of Australia;
- (g) the fleet of major Australian registered ships (over 2,000 dead weight tonnes) with coastal licences plummeted from 30 vessels in 2006-07 to just 15 in 2013-14; and
- (h) the number of ships on Australian Transitional General Licences has dropped from 16 to just 8.

1.4 Indeed, the Productivity Commission noted in its report into Tasmanian freight that:

Given its reliance on sea transport, Tasmania is particularly affected by inefficiencies embedded in coastal shipping regulation. This regulation should be reviewed and reformed as a matter of priority.¹

1.5 This concern was echoed by the Tasmanian Minerals and Energy Council who say in their submission that Tasmanian businesses:

...are the most exposed in Australia to the regulatory framework for coastal shipping which is in urgent need of reform.²

1.6 And the Launceston Chamber of Commerce has said that:

Launceston and Northern Tasmania has suffered considerably from increased costs and timeliness for exports and imports of freight as a result of the enacting of the Coastal Shipping Legislation.³

1.7 The current system just doesn't work. Tinkering around the edges will make it better but it won't let the industry fix its structural issues. We've got an ageing fleet that isn't being replenished.

1.8 In 2013, 49 per cent of the ships in the world fleet were under 15 years old and 79 per cent of the world's gross tonnage was under 15 years old.

1.9 In contrast, the average age of an Australian ship in the major trading fleet and operating under a general licence is 23 years.

1.10 As these ships get older, they get less efficient, they break down more and they cost more to insure. This is why we've seen operators of Australian ships progressively retiring their vessels and not replacing them.

1.11 Without drastic change, the industry will continue to burn out slowly. The current licensing system has little benefit for Australian shippers and ties up the industry in red tape. A simple, one stop, one size permit will ease this burden and make it clear Australia is open for business.

1 Australian Productivity Commission, Productivity Commission Inquiry Report No. 69, 7 March 2014, *Tasmanian Shipping and Freight*, p. 2.

2 Tasmanian Minerals and Energy Council, *Submission 12*, Senate Rural and Regional Affairs and Transport Legislation Committee, Inquiry into Shipping Legislation Amendment Bill 2015 [Provisions], p. 1.

3 Launceston Chamber of Commerce, Media Release, *Launceston Chamber of Commerce Calls for Deregulation of Shipping*, 6 June 2014, <http://lcc.asn.au/news/launceston-chamber-of-commerce-calls-for-deregulation-of-shipping/> (accessed 30 November 2017).

Recommendation 1

1.12 That the Government progress wider coastal shipping reform in order to support jobs and investment in Tasmania and around Australia. Reforms could be modelled on those that were brought to the Parliament by then Minister for Infrastructure and Transport, the Hon. Warren Truss MP and myself as Employment Minister in the Shipping Legislation Amendment Bill 2015 which included:

- (a) introducing a single Coastal Trading Permit for all ships to replace the current tiered system;
- (b) amending legislation to allow the carriage of petroleum products;
- (c) applying a minimum Australian senior crewing requirement for foreign ships remaining on the coast for more than 183 days in a permit period;
- (d) reducing monthly trade reporting requirements to annual reporting;
- (e) removing exemptions for large ships from the Coastal Trading Permit requirements; and
- (f) making amendments to the Australian International Shipping Register to improve competition amongst foreign flagged ships.

Senator the Hon. Eric Abetz

Liberal Senator for Tasmania

Dissenting Report by Labor Senators Sterle and McCarthy

Background

1.1 When the former Government took office in 2007, the Australian shipping industry was in decline. Under the Howard Government (1996 to 2007), the number of Australian-flagged vessels fell from 55 in 1996 to 21 in 2007, with only four operating on international routes.

1.2 In accordance with its *Stronger Shipping for a Stronger Economy* election policy statement, the former Government introduced into the Parliament the *Coastal Trading (Revitalising Australian Shipping) Bill 2012* and a package of related bills¹ designed to revitalise the Australian shipping industry.

1.3 The legislation created a standalone regulatory framework for vessels trading around the Australian coastline. Previously, all vessels engaged in such activities, irrespective of flag and crew nationality, were regulated by the *Navigation Act 1912*.

1.4 The legislation was the culmination of a four year process which involved a parliamentary inquiry and repeated rounds of consultation with industry, unions and other key stakeholders.

1.5 A key objective of the legislation was to facilitate the long term growth of the Australian shipping industry by 'levelling the playing field' and providing the industry with a stable fiscal and regulatory regime, one that would encourage greater investment and promote international competitiveness.

1.6 The legislation does not preclude the use of foreign vessels. To the contrary, it permits the use of a foreign vessel where a suitable Australian vessel isn't available to carry cargo or passengers, so long as they pay Australian-level wages on domestic sectors.

1.7 In addition to a new licensing regime, the former Government's reforms included taxation incentives for flagging ships in Australia and to encourage the employment of Australian seafarers; a new second (or international) register with tax benefits for vessels engaged predominately in the international trade; and a maritime skills development package.

1.8 The legislation passed the Parliament on 18 June 2012, and became law on 1 July 2012. In both the House and the Senate, the Federal Coalition voted against Labor's new laws.

1 Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012; Shipping Registration Amendment (Australian International Shipping Register) Bill 2012; Shipping Reform (Tax Incentives) Bill 2012; and Tax Laws Amendment (Shipping Reform) Bill 2012.

Current Government's approach (since 2013)

1.9 From the outset, the current Government has been determined to substantially alter the 2012 legislation, arguing as they did in a two-page dissenting report from the House Standing Committee on Infrastructure and Communications that it was "likely to significantly increase costs to users of coastal shipping" and "the objective of revitalising the Australian shipping industry is unlikely to be achieved."²

1.10 On 25 June 2015, the Government tabled its *Shipping Legislation Amendment Bill 2015*. The Bill sought to repeal the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and deregulate the Australian domestic shipping industry.

1.11 The Bill would have removed the preference for Australian-flagged and crewed vessels, and replaced the three-tiered licensing regime with a single permit system that granted access to vessels of any nationality to work the Australian coastline for a twelve month period. It would have also significantly extended the period of exemption from domestic wage standards for foreign vessels.

1.12 The Bill passed the House on 14 October 2015.

1.13 However, on 26 November 2015 the Senate declined to give it a second reading, noting:

- (a) the official modelling attached to the Bill forecasted that 93 per cent of seafarer jobs on Australian vessels would be lost under the legislation and 88 per cent of the Bill's "deregulatory savings" would come from replacing Australian wage standards with third world wage standards; and
- (b) evidence given before a Senate inquiry that senior officials from the Department of Infrastructure and Regional Development had advised Mr Bill Milby of North Star Cruises that for his company to remain competitive under the proposed legislation, he should reflag his vessels to a foreign State, sack his Australian crew and hire a foreign crew on cheap foreign wages.

1.14 Despite the failure to repeal the 2012 legislation, the continuing uncertainty surrounding its longevity has deterred investment in Australian flagged vessels and the Australian merchant fleet has continued to shrink. Since the 2013 election, 12 vessels have been reflagged to a foreign State.

Issues raised by the Bill

1.15 The Bill now before the Parliament represents the Government's second attempt to wind back the 2012 coastal trading reforms.

2 Coalition members, Dissenting report, House of Representatives Standing Committee on Infrastructure and Communications, Advisory Report on Bills referred 22 March 2012 (Shipping Reforms), op. cit., pp. 51-53.

Inadequate consultation with industry

1.16 Compared to the extensive consultative process which was undertaken prior to the introduction of the 2012 reforms, the consultation associated with the preparation of this Bill was negligible:

- On 21 March 2017, the Minister released the Coastal Shipping Reforms Discussion Paper seeking stakeholder views on a range of proposed legislative amendments and proposed seafarer training initiatives. A total of 67 submissions were received by the closing date (12 May 2017).
- On 20 April 2016, the Minister held one face-on-face meeting with each of the maritime unions (i.e. Maritime Union of Australia, the Australian Maritime Officers Union and the Australian Institute of Marine Power Engineers). The discussions centred on the importance of Australia maintaining a skilled maritime workforce.
- On 27 April 2016, the Minister hosted two meetings, one attended by users of coastal shipping and the other by stakeholders with passenger shipping interests. The entities consulted in these sessions were:
 - Minerals Council of Australia;
 - Cement Industry Federation;
 - National Farmers Federation;
 - Australian Industry Group;
 - Australia Aluminium Council;
 - Rio Tinto Marine;
 - DP World;
 - Gypsum Resources Australia Representative;
 - Incitec Pivot;
 - Business Council of Australia;
 - Superyacht World;
 - Tourism & Transport Forum;
 - Carnival Australia; and
 - Ocean Alliance NSW.

1.17 Notably, Maritime Industry Australia Ltd (MIAL) – the major peak body that represents Australian-based shipping operators and other Australian-based maritime businesses – nor any of its members (with the exception of Carnival Australia), were invited to participate in either of the meetings hosted by the Minister on 27 April 2016.

1.18 Lastly, no draft of the Bill was circulated publicly for feedback prior to its tabling in the Parliament on 13 September 2017. By comparison, the 2012 legislation was subjected to two rounds of exposure drafts.

Failure to build bipartisanship

1.19 On repeated occasions prior to tabling the Bill, the Minister acknowledged the industry's desire for policy stability and long term investment certainty, and committed himself to building bipartisan support for the changes he would end up bringing forward.

1.20 On 26 April 2017, the Minister told a Shipping Australia luncheon:

One final and important point – I want to see change as much as you do, and I am acutely aware of the need to work towards a reform agenda in a bipartisan...

1.21 In the foreword to his own discussion paper, the Minister wrote:

Another key message from my recent stakeholder consultations is that regulatory certainty, ideally bipartisanship, is essential for investment to be made in the industry and for users of coastal shipping services to plan and invest on the basis that they will rely on coastal shipping services to transport domestic freight.

1.22 However, at no stage before or after the release of the Discussion Paper was the Opposition consulted about the merits or otherwise of possible amendments to the existing legislation. Nor was it given a briefing on the final version of the Bill before it was tabled in the Parliament.

Deregulation by the 'back door'

1.23 The claim that the Bill "does not propose substantial changes to the current coastal trading regime" is false.³

1.24 There are two sets of amendments which are particularly problematic.

Amendments to the tolerance provisions

1.25 The current Act establishes acceptable tolerance limits for TL voyages, being +/-20 per cent for the nominated cargo/passenger volumes and +/- five days for the authorised loading date, without the shipper needing to seek a variation to their existing TL. If sought, a variation must be approved or rejected by the Minister within two business days.

1.26 The Bill proposes to increase the volume tolerance limits to 200 per cent more or 100 per cent less. It also proposes a loading window tolerance of 30 days either side of the authorised date.

3 Senate Rural and Regional Affairs and Transport Legislation Committee, Advisory Report from Inquiry into the Provisions of the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017, December 2017, p. 31.

Implications

1.27 These changes would further deregulate what is already one of the world's most liberal coastal trading regimes.

1.28 The proposed amendments would make it almost impossible for a GL (Australian-flagged) vessel to contest work because their owner/operator would never know the actual volume or the precise loading date. As the Australian Institute of Marine and Power Engineers (AIMPE) put it in its submission responding to the Discussion Paper:

The ultimate voyage carried out may bear no resemblance to the original voyage for which the Temporary License was granted.

1.29 In its submission to this inquiry AIMPE was even more blunt. The proposed amendment to the tolerance provisions:

...would be welcomed by foreign flag ship operators however it would make it much easier for foreign ship operators to exploit the system and could be far more easily manipulated. AIMPE strongly opposes this change to further open the coastal trading industry to foreign ships with foreign crews under temporary licences.⁴

1.30 According to Maritime Industry Australia Ltd (MIAL):

The integrity of the current structure of the regime is supported by meaningful tolerance provisions. ... Changes to the tolerance provisions in both time and cargo/passenger volume will have the effect of undermining the licensing regime.⁵

1.31 This is a view echoed by the Maritime Union of Australia (MUA):

The consequence of enacting ... [the proposed changes to the tolerance provisions] 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.⁶

1.32 Operators of vessels involved in the coastal trade have also expressed concern about changes to the tolerance limits, including CSL which currently owns three Australian-flagged vessels operating around the coastline.⁷ According to another, ANL:

...the current date tolerance seems reasonable.⁸

4 Australian Institute of Marine and Power Engineers, *Submission 1*, p. 10.

5 Maritime Industry Australia Ltd, *Submission 14*, p. 4.

6 Maritime Union of Australia, *Submission 18*.

7 CSL, *Submission to Coastal Shipping Reforms Discussion Paper*, April 2017, p. 1.

8 ANL, *Submission to Coastal Shipping Reforms Discussion Paper*, 10 May 2017, p. 4.

1.33 Lastly, True North Adventure Cruises, the operator of tourism vessels off north-west Western Australia, has warned that the proposed changes to the tolerance limits would allow shippers and foreign operators to 'game' the system:

This amendment would allow foreign applicants for temporary licences to apply for a greater number of licences and then only operate when they have "SOLD" passenger places in their vessel e.g. a foreign small cruise vessel could apply for 100 temporary passenger voyage licenses to cruise Sydney Harbour (or the Great Barrier Reef, or the Kimberley's) then park their vessel at the relevant jetty and sell their product using the foreign vessel with foreign crews, competing directly with an existing Australian owned, operated and crewed vessel.

Streamlining the TL variation process

1.34 Currently, there are two types of licence variations to an existing TL – 'authorised matters' (a change to a loading date or volume on an existing planned voyage) and 'new matters' (authorising an entirely new voyage on an existing TL).

1.35 In the name of 'streamlining', the Bill proposes replacing the two types of licence variations with a single TL variation provision.

Implications

1.36 Reclassifying the addition of a new voyage to an existing TL from a 'new matter' to an 'authorised matter' would halve the time available to a GL holder (i.e. the operator of an Australian-flagged vessel) to apply for that new voyage from the current two days to just 24 hours. Simply put, this would make it more difficult for Australian vessel owners/operators to compete for work.

1.37 According to Maritime Industry Australia Ltd (MIAL):

This proposed change undermines the position of GL holder as for new voyages they will only have one day to respond to a TL application rather than the current 2 days.⁹

1.38 In his second reading speech (13 September 2017) the Minister assured the Parliament that the Bill "makes amendments to the existing regulatory regime, rather than fundamentally restructuring it".

1.39 However, the analysis above confirms that not to be the case.

1.40 According to MIAL:

...there is nothing in the Bill to assist Australian shipowners compete with foreign ships that have all but unfettered access to coastal trades. We held low expectations on that front and unfortunately haven't been disappointed there.¹⁰

1.41 To be sure, the Regulation Impact Statement is explicit about the Bill's goal of increasing the presence of foreign vessels around the Australian coastline:

9 Maritime Industry Australia Ltd, *Submission 14*, p. 3.

10 Media release, *Coastal Shipping – the challenge continue*, 13 September 2017

...the current framework makes it unattractive for foreign ships to enter the coastal trading sector. ... These amendments ... will remove the barriers that currently face many foreign flagged vessels under the current system.¹¹

1.42 Not only is the Australian maritime industry concerned the Bill will tilt the playing field further in favour of foreign operators, but other transport modes are equally concerned that it will put them at a competitive disadvantage. In particular, the Freight on Rail Group wrote in their submission in response to the Discussion Paper:

...the proposed amendments have the potential to introduce an unreasonable competitive advantage to foreign ships that may choose to compete in the domestic freight market. This unreasonable competitive advantage arises as the proposed amendments allow foreign shippers to compete in the domestic freight market against land freight transport operators that have to comply with all laws and regulations. In particular, exemptions would allow foreign ships to incur substantially lower wages, conditions and associated workplace relations costs when compared to rail, road and Australian-based coastal shipping companies.¹²

Conclusion

1.43 For sound economic, environmental and national security reasons, Australia needs a strong and growing merchant fleet of its own. Our long term national interest demands nothing less.

1.44 However, the Bill currently before the Parliament will only accelerate the industry's decline, eventually consigning Australia's status as a proud maritime nation to the history pages. That would be an unbelievable development given we are an island continent, almost all of our imports and exports are transported in the hull of ships, and even more significantly, a tenth of global sea trade flows through our ports.

1.45 Accordingly we recommend the Bill be opposed in its entirety.

Senator Glenn Sterle
Deputy Chair

Senator Malarndirri McCarthy
Senator for the Northern Territory

11 Regulation Impact Statement, *Coastal Shipping (Revitalising Australian Shipping) Amendment Bill 2017*, pp. 9, 14.

12 Freight on Rail Group, Submission to Coastal Shipping Reforms Discussion Paper, May 2017, p. 11.

Dissenting Report by the Australian Greens

1.1 The Australian Greens oppose the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 (the bill).

1.2 The Australian Greens supported the referral of the bill to the Senate Regional and Rural Affairs and Transport Legislation Committee because we were concerned that the bill would have a destructive impact on our coastal shipping industry and workforce in Australia.

1.3 The majority report has not captured the full breadth of impacts that this legislation would have on our local shipping industry, in particular the impacts on the Australian maritime workforce.

1.4 Deregulation of our coastal shipping sector in Australia will lead to a loss of Australian jobs, and will further embed a situation where we have ships on the seas that are not up to scratch and risk polluting our oceans and coastlines with oil spills.

1.5 This bill represents the government's response to a reduction in Australian shipping, and is a second attempt to change the Australian shipping regime following its failed 2015 legislation.

1.6 Senators on the committee heard from many stakeholders, many of which echoed their contributions to the Minister's Discussion Paper process. However, many noted in their submissions that a number of their Discussion Paper responses and proposals appear not to be reflected in the bill.

1.7 We particularly note criticism of the bill's changes to tolerance provisions, with both industry voices and worker voices noting that the changes in the bill are not acceptable.

1.8 The Australian Greens oppose this bill. We urge the government to consider key proposals put forward by industry and unions to the Minister's 2017 Discussion Paper, with the aim of reaching an agreement that stakeholders can support.

Recommendation 1

1.9 The Australian Greens recommend that the Senate reject the bill.

**Senator Janet Rice
Australian Greens**

Appendix 1

Submissions received

Submission Number	Submitter
1	Australian Institute of Marine and Power Engineers
2	Department of Infrastructure and Regional Development
3	Councillor Dominic WY Kanak
4	Mr E.J. Wilson
5	Superyacht Australia
6	Shipping Australia Limited
7	Australian Aluminium Council
8	Ports Australia
9	Australian Trade and Investment Commission (Austrade)
10	Cruise Lines International Association
11	Australian Maritime Officers Union
12	North Star Cruises Australia
13	The Company of Master Mariners of Australia – Sydney Branch
14	Maritime Industry Australia Ltd
15	Australian Institute of Petroleum
16	Cement Industry Federation
17	AI Group
18	Maritime Union of Australia
19	Business Council of Australia