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Shipping Australia Limited's Submission in Response to Coastal Shipping Reform Discussion Paper – March 2017

About Shipping Australia Limited

1. Shipping Australia Limited (SAL) is a peak shipowner association with 36 member lines and shipping Agents and 50 corporate associate members, which generally provide services to the maritime industry in Australia. Our member lines are involved with over 80 per cent of Australia's international trade and car trade as well as over 70 per cent of our break-bulk and bulk trade. A small number of our members are also actively engaged in the provision of coastal cargo services to Australian consignors and consignees; this number has reduced since legislative changes in 2012.
2. A major focus of SAL is to promote efficient and effective maritime trade for Australia whilst advancing the interests of ship-owners and shipping agents. SAL also provides secretariat services to the liner companies and agencies that are members of conferences, discussion agreements, consortia and joint services that have their agreements registered under Part X of the *Australian Competition and Consumer Act 2012*. These agreements specifically seek to facilitate and encourage growth of Australia's liner shipping trades.
3. Following consultation with members, SAL is pleased to make the following submission.

Introduction

4. SAL welcomes the government's discussion paper on coastal shipping reform and agrees that the current *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CTA) and its supporting regulations has had a detrimental effect on the movement of domestic cargo by sea, partly through its policy intent but largely through red tape. The regime has proven to be inefficient and burdensome on shippers and the shipping industry, restricting access to the Australian market and resulting in the limitation of access of local businesses to efficient and cost-effective shipping services.
5. Six of our member shipping companies with ships of various foreign flags currently engage in the provision of coastal cargo services to Australian consignors and consignees. Our other member

lines do not currently participate in the coastal trade for various reasons, some withdrew from the trade due to administrative and cost burdens of the Fair Work Act and Coastal Trading Act. All of these non-participating members indicated that they may participate in the carriage of coastal cargo if the regulations were to change.

6. Regulatory stability is an important factor for SAL members. Shipping is a capital-intensive business and shipping companies make investment decisions for the long term. Regulatory stability will give shipping companies the confidence to invest in the infrastructure necessary to enable participation in the domestic shipping market Accordingly, SAL supports a bi-partisan approach to making changes to coastal shipping regulation where this can be reasonably achieved.

Proposed Amendments to the Coastal Trading Act

7. The following table provides SAL comment on the specific proposals in the discussion paper:

Suggested amendment	SAL Comment
1. Remove the five-voyage minimum requirement for a TL	<ul style="list-style-type: none"> • Supported • As a Temporary License (TL) is currently valid for 12 months, under the proposed amendments the relationship between a “Temporary Licence” and the new single voyage approval and subsequent approvals may need further clarification i.e. are the TL and a single voyage approval separately? What happens for subsequent approvals? Is it a TL each time? • The time frame for approval of a TL is currently 10 days, this is too long a period for a single voyage permit. Noting that the paper acknowledges cargoes may need to be carried at short notice, this period will need to be amended within section 15(3) of the Coastal Trading Act 2012 (CTA) • Clarification of what would constitute “short notice”
2. Streamline the licensing process where no General Licence (GL) vessels are available	<ul style="list-style-type: none"> • Supported in principle; • This should reduce the 10-day approval time frame; • Any implementation of the proposed amendments should be based on the primary classification of the ship as stated on the IMO registration certification; • The requirement for the Minister to consult with other stakeholders as referred to in section 30 of the CTA should also be removed as it adds no value to the approval process; • A suggested approach would be that Section 11 of the CTA be utilised to exempt a class or classes of vessels (similar to the existing cruise vessel exemption) and such exemptions be periodically reviewed and time based.
3. Streamline the TL variation process	<ul style="list-style-type: none"> • Supported. • This may not apply in all circumstances such as spot hire at short notice where approval could be required at short notice
4. Amend voyage notification requirements	<ul style="list-style-type: none"> • Supported • Amendment should have the ability to add new voyages to a 12-month TL issued • Suggest a renewal of TL once issued
5. Amend the tolerance provisions	<ul style="list-style-type: none"> • Removal of volume tolerances supported. • Based on these changes once the initial TL is approved a voyage must be undertaken with 30 days.

6. Replace the current three-tier regime with two tiers	<ul style="list-style-type: none"> • Supported. • The detail and the criteria relating to what constitutes an emergency will need to be carefully considered.
7. Extend the geographical reach of the Coastal Trading Act	<ul style="list-style-type: none"> • Supported • Need to consider ship-to-ship transfers (especially petroleum), should this eventuate at some time in the future.
8. Allow dry-docking	<ul style="list-style-type: none"> • Supported.
9. Minor technical amendments	<ul style="list-style-type: none"> • Supported. • In the context of GL vessel and the related consultation process, it is suggested that the type of vessel be based on that reflected on its IMO Certification.

Removal of the FWA Provisions from International Vessels

8. In addition to the specific amendment described above, SAL recommends the removal of the application of the Fair Work Act from international vessels carrying domestic cargo. This recommendation is justified as follows:
- a. The entry into force of the Maritime Labour Convention 2006 (MLC) in September 2013 has provided the appropriate regulatory framework for the governance of employment conditions of seafarers. This includes the principle of a minimum wage which is now referenced in the Convention. Like Australia, open registries including Panama and Liberia have ratified the Convention, enacting legislation. The MLC allows Australia to inspect ships for matters in relation to crew welfare and payment of wages within its jurisdiction. AMSA has shown their effectiveness in enforcing this convention. This development and the continuing strengthening of the MLC, such as the February 2017 amendments relating to guaranteed repatriation of seafarers, render the application of Australia's Fair Work Act unnecessary.
 - b. The administrative burden of compliance with the Fair Work Act (2009) (FWA) and the additional wage cost per voyage, regardless of the volume of cargo carried, are the most damaging economic factors imposed on cabotage cargoes: they severely limit participation in coastal shipping and competition in the domestic freight sector. The FWA requires payment of Seagoing Industry Award Part B wages to the crews of foreign ships when carrying coastal cargoes. SAL estimates the additional crew cost due to the application of the FWA to a container ship undertaking coastal voyages for Melbourne to Fremantle and Brisbane to Fremantle to be \$33,000 and \$60,000, respectively. These costs apply regardless of the quantity of domestic cargo carried and are a disproportionate cost imposition on coastal cargo.
 - c. The requirement to pay FWA Part B wages to crew members on ships carrying domestic cargo on a third and subsequent voyage in Australia introduces a difficult inequity to the wage system for global shipping operators when other company employees are doing exactly the same work for different wages. Reputable shipping lines follow MLC wages as a minimum and this is clearly traceable and monitored by AMSA for ships in Australian waters.

Response to Discussion Questions

9. The following table provides SAL comment on the discussion questions reflected in the paper:

Discussion Questions	SAL Comments
<p>1) Are the issues identified in the Discussion Paper consistent with the issues you have experienced with the current coastal trading regulatory regime? Please explain how.</p>	<ul style="list-style-type: none"> • Generally, yes. • Adherence to the coastal licence requirements in Australia is time-consuming and complex. Some shipping lines have five separate desks involved in managing the day-to-day tasks associated with the coastal market. Shipping lines operating a coastal service in New Zealand do not face the same regulatory requirements or complexity as in Australia. There are nil licence or reporting requirements and due to this, the management of coastal cargo sits with just one person and has been operating effectively. • The effect of red tape on economic output is best described by what would be gained by its removal: reduced administrative and compliance costs would enable more international vessels to participate in the coastal trade bringing increased frequency and certainty to domestic schedules. In turn this would increase the demand for coastal shipping and increase the competition between domestic providers, resulting in lower freight rates for all Australian shippers both domestic and international. • Australian coastal shipping services need to be competitive, otherwise it will be cheaper to source foreign product rather than transport similar goods around the Australian coast. • Coastal shipping can be highly competitive with road and rail if the administrative inflexibility of access to it is removed. The removal of volume tolerances will be particularly beneficial in this regard. • Increased access to coastal shipping will alleviate predicted road freight congestion and also provide an effective alternate to road and rail when these modes are interrupted by weather events which occurs frequently.
<p>2) Do any of these issues give rise to other matters that require further consideration?</p>	<p>The implementation process associated with the changes to TL approvals may need to be considered and clearly articulated in guidance material to ensure that any potential gaps are addressed.</p>
<p>3) Do you support the proposed amendments to the Coastal Trading Act? If not, please describe why.</p>	<p>The amendments as set out aim to ease the administrative process related to TL approvals and are generally supported.</p>
<p>4) Do you believe the proposed amendments to the Coastal Trading Act will improve the current regulation of coastal trading, and reduce regulatory burden? If not, please describe why this is the case.</p>	<ul style="list-style-type: none"> • The suggested amendments are primarily the first step in reducing the cumbersome processes associated with the current movement of coastal shipping. The benefits will only be apparent once these time-consuming processes are eliminated and confidence is established in the coastal regime. • Lessons should be learned from the cruise sector where an exemption from the current licensing regime since 2012 (by application of section 11 of the Act) and recent extension till the end of 2018 has resulted in exceptional growth in this sector as outlined by the International Association's 2015 Industry Source Market Report.

Discussion Questions	SAL Comments
<p>5) Are there any other amendments to the Coastal Trading Act the Government should consider implementing?</p>	<ul style="list-style-type: none"> • Inflexibility of discharge port: In the context of bulk and break-bulk cargoes, external factors such as port congestion or bad weather have created a situation where it is efficient the change the discharge port. However, the lack of flexibility in the Temporary Licence system to allow such minor changes and the time delay to get a licence amendment approved has resulted in ships waiting idly at costs in the vicinity of \$20,000 per day. An appropriate amendment to provide flexibility is recommended. • Transhipment via overseas port: Another area of difficulty exists when a domestic cargo is consigned from one Australian port to another Australian port via transhipment at an overseas port. Neither vessel is by definition engaged in coastal trading, however the cargo is domestic. Under the current regulations, it appears that the only option is to export and import the cargo at additional cost and administration. • Movement within a port: The current licensing regime does not cater for circumstances where cargoes such heavy lifts may be required to move from one part of a port to another using a vessel and no general licence vessel is capable undertaking such a task. A SAL member experience such a situation recently. An appropriate amendment would assist. • Exemptions for uncontested sectors. The exemption granted to cruise shipping is on the basis “<i>that Australia does not currently have any Australian registered vessels in this category</i>”. Applying the same principle to other uncontested (no Australian flag or General Licence participants) shipping sectors, such as large container, pure car carrier, heavy lift and break-bulk, would enable vessels in these categories to also be granted exemption reducing unnecessary red tape. This would improve efficiency and lead to substantial growth of coastal cargo for these sectors. Building a strong customer demand for coastal shipping services is the policy shift needed before Australia can hope to establish a sustainable and viable domestic shipping industry. • Propose expanding the definition of a person who may apply for a temporary licence to a consortia member or slot charterer sharing space with that owner/charterer on a given vessel. • The Act as written is too prescriptive regarding processes for the issuance of TL and other provisions and as such these matters should be dealt with by regulation and Ministerial legislative instruments and supported by departmental guidance material.
<p>6) Which of the proposed seafarer training initiatives do you support (either separately or in combination)?</p>	<ul style="list-style-type: none"> • Cadets to officers may be the viable pathway for this training; • The essential maritime skills need to be clearly defined. Given the quantum of Australian flagged vessels, Class 1 engineers or foreign going masters are not required. The skills requirements could emanate from Pilots and port managers and SAL is aware that AMPI (through

Discussion Questions	SAL Comments
	<p>Pilot Training Advisory Board) has developed a Pilot training continuum based on entry level from Master class 3 or 4 obtainable from local maritime operations.</p> <ul style="list-style-type: none"> • Given that funding of the seafarer training initiatives eludes to foreign shipping companies contributing to a fund, the application of the FWA and the Seagoing Industry Award in such cases will be redundant and therefore should be removed. Further matters relating to seafarer welfare and remuneration are now adequately covered by the MLC and its recent changes and monitored via Port State Control; • SAL should be an active participant in the proposed Reference Group.
<p>7) In your opinion, will any of the proposed seafarer training initiatives be successful in developing and retaining critical Australian maritime skills?</p>	<p>As mentioned above SAL considers that the cadet to officers' option may be the viable pathway for this training initiative.</p>
<p>8) Do you consider the funding option proposed, where the equivalent of Part B wages are used to finance seafarer training, viable?</p>	<ul style="list-style-type: none"> • It is noted that the Paper only includes one funding option put forward by industry (MIAL Green Paper – No'16) and does not include the cargo based levy previously suggested by SAL. No other options have been put forward by the Department; • The funding option in the Paper is supported only on the basis that application of the FWA and the Seagoing Industry Award are removed and do not apply (see Q6 above). In that case, a fixed rate fee applicable to all licence holders, no more than the cost incurred under the current Part B wages requirement with relevant criteria on its application could be considered as a mechanism to reduce unnecessary administrative calculations. <p>A fairer alternative that will not act as a barrier to carriage of domestic cargo.</p> <ul style="list-style-type: none"> • SAL members would strongly prefer to see the establishment of a fund to support training to develop essential maritime skills in Australia if the contribution towards that fund are levied proportionate to the volume of coastal cargo carried. It must not be a charge unrelated to the potential profit of carrying domestic cargo or it will present a significant barrier to participation in coastal trade which is contrary to the efficient carriage of coastal cargo and contrary to economic interests of Australia. • It is suggested that the mechanism (which must replace the Part B Wage component) be based on a cargo (including passengers) based tax at a fixed rate per volume/passenger which goes towards the creation of a training funding. This fund is used to address any pay gaps for Australia seafarers working in international shipping plus contribute to the mandatory super funds. It is important that a fixed per volume tax is established to provide industry certainty for shipping lines who wish to participate in coastal trading. This should be reviewed periodically based on training needs and goals. • The administration of such fund must not be placed in the hands of any Union.

Conclusion

10. The outcome sought by SAL members would be a bipartisan supported, simple and stable coastal trading regulatory environment that will encourage a cost effective and flexible coastal shipping service to operate for the benefit Australian producers and customers. This will facilitate intra-Australian sourcing, reducing the cost pressure for import substitution and thus strengthen the domestic market. The result will be more cost effective for producers and consumers and deliver productivity gains for Australia.

Submission authorised by: R. Nairn, AM, Chief Executive Officer