



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

TRANSPORT / SURFACE TRANSPORT, EMISSIONS AND POLICY / STRATEGIC FLEET / LEGISLATIVE
REVIEWS

Consultation for Phase 1

Independent Review of the Coastal Trading (Revitalising Australian Shipping) Act 2012

October 2024



Introduction

The Government agreed to review the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act) in its response to Recommendation 6 from the [Strategic Fleet Taskforce Final Report](#). On 20 August 2024, the Australian Government appointed Ms Lynelle Briggs and Prof Nicholas Gaskell to co-chair the Review of the Act.

The Review will be conducted over two phases. Phase 1 will focus on the object of the Act and how it impacts the design, structure and overall functionality of the Act. The second phase will consider potential reforms to the Act and the likely impacts of those reforms. A written report will be provided to the Minister for Infrastructure, Transport, Regional Development and Local Government at the conclusion of the Review.

The full Terms of Reference including the scope for the Review of the Act are at <https://www.infrastructure.gov.au/sites/default/files/documents/terms-of-reference-cta-review.pdf>.

This Review is being undertaken in parallel with the Review of the *Shipping Registration Act 1981*, and by the same co-chairs.

Strategic Fleet

The Australian Government committed to establishing a strategic fleet of up to 12 Australian-flagged and crewed vessels. They will be privately owned and operate on a commercial basis, but could be requisitioned by the Government in times of national crisis such as natural disaster or conflict. The Government appointed the Strategic Fleet Taskforce to guide the establishment of the fleet. The Taskforce provided their final report and recommendations to Government in June 2023.

The Reviewers take as their starting point the findings and recommendations of the Strategic Fleet Taskforce: Final Report.

Have your say

The Reviewers are seeking submissions from interested stakeholders to inform the Review. Your input is extremely valuable to ensure the recommendations to the Australian Government are relevant and will positively impact industry.

The Review of the Act and consultation process is distinct from the Review of the *Shipping Registration Act 1981*. However, we encourage stakeholders interested in providing a submission to this paper to consider the consultation process being undertaken on the Review of the *Shipping Registration Act 1981* and the consultation paper which can be found on the Department of Infrastructure, Transport, Regional Development, Communications and the Arts Have Your Say website at www.infrastructure.gov.au/shipping-registration-act-review.

Next steps

This paper is for Phase 1 of the Coastal Trading Act Review and further consultation will be conducted throughout the Review. Consultation will involve several processes including meeting with a range of key stakeholders to discuss their interests and concerns, and additional consultation papers requesting written stakeholder feedback.

1. Brief background to coastal trading regulation

Most countries with coastlines have coastal trading legislation (sometimes referred to as ‘cabotage’ legislation) that gives preference to local ships in the carriage of goods and/or passengers between that country’s domestic ports. The regulatory approach to coastal trading or cabotage legislation across countries varies substantially.

The benefits of coastal trading legislation include protecting the country’s domestic shipping industry from foreign competition and ensuring the supply of domestic shipping for national security purposes. This should include transportation of critical cargo during times of disaster when road and rail infrastructure are not be available.

Australia has regulated coastal trading since 1913 (with the commencement of the *Navigation Act 1912*) when ships were not permitted to engage in coastal trading unless licensed. Licences gave an unrestricted ability to carry coastal cargoes and passengers to vessels of any nationality, provided seafarers were paid Australian wages and vessels were not in receipt of a subsidy from a foreign jurisdiction.

Eventually, the Navigation Act was amended to provide for single voyage permits or continuing permits for foreign flagged vessels to carry cargo or passengers where a licensed vessel was unavailable. Crewing requirements on vessels under these permits were exempt from Australian seafarer regulatory requirements and they operated with much lower cost structures.

By 2012, the Australian fleet had reduced to 21 ships from 55, with only 4 operating on international routes. At that time, Australian ports managed 10 per cent of the world's entire sea trade and moved \$200 billion worth of cargo annually.

The Act was introduced in 2012 as a part of a major reform package to revitalise the Australian shipping industry and reverse the decline in Australia’s major trading fleet. The Act provides for three types of licences:

- general licences, which authorise a vessel registered in the Australian General Shipping Register (Australian flagged and crewed) to engage in coastal trading for a period of up to 5 years and provides unrestricted access to coastal trade
- temporary licences, which enable a foreign vessel (or vessel registered in the Australian International Shipping Register), to engage in coastal trading over a 12-month period
- emergency licences, for one or more vessels to engage in coastal trading in prescribed emergencies.

Temporary licence applications under the Act are subject to an open process—a general licence holder can request, through giving notice, that they carry the applicant’s trade. Where a general licence holder has given notice, the temporary licence applicant and general licence holder must enter into negotiations about the general licence holder carrying the cargo. The Minister (or their delegate) must then decide whether the temporary licence should be granted.

When deciding an application for a temporary licence, the Minister (or delegate) must have regard to several matters, including the outcome of negotiations and whether and to what extent the vessel authorised by the general licence holder’s licence is equipped to carry the passengers or cargo specified in the temporary licence application.

Despite the Act being introduced, the Australian shipping industry has continued to decline from the 21 vessels in 2012 to now having 11 major trading vessels operating under a general licence.

1.1 Policy objectives to revitalise Australian shipping

Australia relies on shipping for our economic and social well-being. In 2022–23, coastal shipping moved 91.3 billion tonne kilometres of all goods moved in Australia (accounting for 11.73 per cent).¹ The types of cargo moved domestically can be separated into bulk cargo (such as crude oil, chemicals, liquefied gases, grains, minerals and steel) and containerised cargo (such as raw materials and finished goods).

The importance of shipping was illustrated during the Covid-19 pandemic and was reinforced when the rail line to Western Australia was cut in 2022 due to flooding. In the latter example, shipping was critical to keeping vital goods moving west and east across Australia. With so few Australian flagged and crewed vessels operating, Australia would have great difficulty in a major crisis in accessing and controlling the maritime assets that we might require.

Nations with larger fleets controlled under their flag or registration reap benefits such as the creation of skills, revenue generation from the ensuing economic clusters that develop in support of large fleets, control of critical strategic assets, supply chain security and economic diversity.

Our maritime workforce is also of critical importance. Demand for Australian seafarers is outstripping supply across the maritime industry, for roles both at sea (including pilots) and ashore (like harbour masters). Without action, the Australian maritime workforce will not be able to meet the needs of the strategic fleet and the broader economy. There is an increasing global demand for seafarers qualified according to international standards and this will make it increasingly difficult for Australia to attract and retain skilled people, even through the use of work visas and migration.

Taking into consideration the Strategic Fleet Taskforce Final Report and the Government’s commitment to implementing a strategic merchant fleet as a step to revitalise the industry (starting with the three vessels for the Strategic Fleet pilot program²), we propose to conduct the Review of the Act with the following policy objectives in mind:

1. Revitalising the Australian shipping industry by increasing Australian shipping capacity.
2. Ensuring the stability of our existing shipping industry and provide certainty for industry to invest long-term.
3. Providing a regulatory framework that supports our sovereign manufacturing base without undermining Australian shipping.

2. Objects of the Act

Australian legislation often has an objects clause outlining the underlying purposes of the legislation. Objects clauses have been described as a ‘modern day variant on the use of a preamble to indicate the intended purpose of legislation’.³ Objects clauses are used to give readers a general understanding of the purpose of legislation, or to set out general aims or principles that help readers to interpret the detailed provisions of legislation.⁴ Often the objects clause is used to resolve uncertainty and ambiguity in decision making under legislation and the Act is no exception to this.

The object, outlined under s 3 of the Act, states:

- (1) The object of this Act is to provide a regulatory framework for coastal trading in Australia that:
 - (a) promotes a viable shipping industry that contributes to the broader Australian economy; and

¹ Bureau of Infrastructure and Transport Research Economics Statistical Report, Australian Infrastructure and Transport Statistics: Yearbook 2023 (December 2023), <http://www.bitre.gov.au/sites/default/files/documents/bitre-yearbook-2023.pdf>, p. 86

² [Implementation of the Strategic Fleet | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#)

³ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice* (ALRC Report 108)

⁴ Office of the Parliamentary Council, *OPC’s drafting services: a guide for clients*, [s13ag320.v55.pdf \(opc.gov.au\)](https://www.opc.gov.au/sites/default/files/2023-06/s13ag320.v55.pdf).

- (b) facilitates the long term growth of the Australian shipping industry; and
- (c) enhances the efficiency and reliability of Australian shipping as part of the national transport system; and
- (d) maximises the use of vessels registered in the Australian General Shipping Register in coastal trading; and
- (e) promotes competition in coastal trading; and
- (f) ensures efficient movement of passengers and cargo between Australian ports.

2.1 Options for a future Object of the Act

It is important that the Act has a clearly stated Object section that is unambiguous and consistent with the primary intent of the legislation. Decision-makers take the Object of the Act into account when making licensing decisions under the Act. There is an internal tension within the Objects section which provides for a number of aims. Some objects are aimed at maximising the use of Australian vessels (with local crew), while others promote competition in coastal trading, supporting the entry of foreign vessels into Australia's coastal trade.

The internal conflict in the Object gives rise to ambiguity and difficulties—both in decision making and in negotiations between temporary licence applicants and general licence holders. Several court decisions have noted the unresolved tension in the Object section, which may give decision-makers a significant degree of latitude in administering the Act.⁵

Given the tensions in the current Object and the acknowledgement from Government that we must grow the shipping industry, the Objects clause in the Act may require a reweighting. The reweighting would be in favour of Australian shipping so that it reflects more than a merely neutral regulatory framework for coastal trading in Australia. We have identified the following 3 options for how it could be amended:

- **Option 1—A simplified Object**

The object of this Act is to provide a regulatory framework for coastal trading in Australia that:

- promotes an efficient and viable Australian shipping industry that contributes to the broader Australian economy; and
- facilitates the long-term growth of the Australian shipping industry; and
- promotes competition in Australia's coastal trading industry.

- **Option 2—A combination of primary and secondary Objects**

The main object of this Act is to provide a regulatory framework for coastal trading in Australia that promotes an efficient and viable Australian shipping industry which contributes to the broader Australian economy.

The Act is also intended to:

- facilitate the long-term growth of the Australian shipping industry; and
- enhance the efficiency and reliability of Australian shipping as part of the national transport system; and
- maximise the use of vessels registered in the Australian General Shipping Register in coastal trading; and
- promote competition in coastal trading; and
- ensure efficient movement of passengers and cargo between Australian ports.

- **Option 3—Keep the current Object of the Act without changes.**

Consultation questions

1. Of the 3 proposed options for the Object of the Act, with which do you agree most? Please explain why.

⁵ See eg [CSL Australia Pty Limited v Minister for Infrastructure and Transport \[2014\] FCAFC 10](#) [30-31, 345-352].

2. Is there anything else that should be considered for inclusion in the Object of the Act? Please explain why.

3. Current coastal trading regulatory framework

The regulation of coastal trading can take a variety of forms depending on the policy intent of each jurisdiction. Australia has always had, and continues to have, a general prohibition on unlicensed coastal trading in Australia⁶. The current licencing regime enables unrestricted access for Australian vessels and strong monitoring of foreign vessels. In the past, Australia has had a combination of licensing and permits to regulate coastal trading.

Some jurisdictions such as the United States of America have a prohibition for all foreign vessels coastal trading while other countries such as the United Kingdom, Denmark and New Zealand have a fully open coast with minimal to no regulation.

Canada has the most similar coastal trading regulatory framework to Australia; however, Canada only allows foreign vessels to trade under licence where no suitable Canadian vessel is available to perform the service or activity. Canada also requires foreign vessels involved in coastal trading to follow Canadian labour regulations.

The proposed simplified Object of the Act prioritises Australian shipping and facilitates its long-term growth. However, as was recognised when the Act was first introduced in 2012, we consider there continues to be a legitimate role for foreign flagged vessels in our domestic shipping industry. Given this, we would like stakeholder views on the current licensing framework, whether it aligns with our proposed simplified Object and provides the right balance between helping grow Australian shipping and recognition of the role of foreign flagged vessels in coastal trading.

Questions 3-5 address general issues, while more specific issues on to the regulatory framework are addressed in Questions 6-8 (temporary licences) and Questions 9-11 (passengers).

Consultation questions

3. Is the current licencing framework fit-for-purpose?
4. Are there alternative coastal trading regulatory frameworks that are better suited to Australia's coastal trading market? Why/why not?
5. How can Australia's coastal trading regulatory framework better support the growth of the Australian shipping industry while still enabling foreign vessels to engage in coastal trading?

3.1 Temporary licences

Temporary licence data from the Department indicates that there have been 40-51 individual temporary licence holders each year since 2013. Of those licence holders, roughly 50% are regularly granted to the same organisation. That is, as temporary licences lapse applicants apply for and are often subsequently granted new temporary licences to engage in coastal trading for a further 12 months—equivalent to a rollover of their licence each year. This suggests Australia has a viable market for these organisations to engage in coastal trade. Regularly granting these temporary licences indicates there is an opportunity for Australia to grow its fleet and raises questions about whether these licences are 'temporary' in nature.

Temporary licences should not be granted on a regular basis, particularly when we know that Australia needs more Australian flagged and crewed vessels. However, we recognise there may be a legitimate

⁶ Section 83 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

commercial value in the temporary licence and as such we'd like to understand that value and how it may be leveraged to encourage more vessels to transition to being Australian flagged and crewed.

We agree with the Strategic Fleet Taskforce that the Act has not achieved its purpose, and that strategic fleet cargo volumes and trade could be undermined by the current regulatory provisions for the award of temporary licences⁷.

However, there is not enough capacity in the Australian major trading fleet to transport all the freight currently carried under temporary licence by foreign-flagged vessels. In 2018-19, foreign-flagged vessels operating under coastal trading temporary licences transported approximately 76.3% of total tonnage under licence and approximately 58% of total coastal freight carried (including intrastate shipping).

We understand that cargo owners are entitled to make commercial decisions for their businesses about which vessel they use and that economic efficiency should be a consideration in the design of a coastal trading system.

Consultation questions

6. Should temporary licence holders who have held temporary licences year after year be required to transition to a general licence or a new category of licence that better represents the regularity of trading they engage in?
7. If you regularly hold temporary licences, what is inhibiting you from transitioning towards being Australian flagged and crewed? What would encourage you/provide an incentive for you to transition to being Australian flagged and crewed?
8. If you regularly hold temporary licences, please identify the impact, financial or otherwise, a move to the use of an Australian vessel may have on your business operations? Please provide as much detail as possible.

3.2 Treatment of passengers

The Act defines 'coastal trading' to include the carriage of passengers or cargo (for, or in connection with, a commercial activity) between interstate Australian ports. A person must not engage in coastal trading without a licence unless the person or the vessel is exempt from the Act.

We consider that the application of the Act raises rather different issues for passengers than for cargo. For instance, passengers pay for a fare to arrive at a particular destination and to do so with particular facilities, service standards or experiences.

However, we acknowledge that not all passengers are the same. For example, a person paying for a ferry to cross the Bass Strait is likely to have different requirements and expectations to a cruise passenger who pays not only for coastal travel but the overall experience of a cruise. Cruise operators provide forward looking schedules to secure bookings from customers who may want to know what specific vessel they will be sailing on. Unlike cargo owners, many cruise passengers are unlikely to be 'vessel agnostic' and are willing and able to pay what is required to ensure they get the experience they are looking for from a vessel.

Australia has made specific arrangements for two categories of passengers in the coastal trade: those crossing the Bass Strait to Tasmania by ferry, and those going on a cruise in Australian waters.

Section 11 of the Act provides that the Minister may, by legislative instrument, direct that the Act does not apply to a vessel or a class of vessels or to a person or a class of persons. An exemption may be confined to one or more specified periods and/or to one or more specified voyages. An exemption is subject to any such conditions as are specified in the direction.

⁷ Recommendation 6, Strategic Fleet Taskforce: Final Report, November 2023.

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An exemption under section 11 of the Act currently applies in relation to cruise vessels in excess of 5,000 gross tonnes which are:

- (a) capable of a speed of at least 15 knots
- (b) capable of carrying at least 100 passengers; and
- (c) utilised wholly or primarily for the carriage of passengers between any ports in the Commonwealth or in the Territories, except between Victoria and Tasmania⁸.

The exemption has been in place under successive legislative instruments made since the Act's commencement, with the most recent legislative instrument having been notified on the Federal Register of Legislation on 19 August 2024 to have effect from 1 January 2025 to 31 December 2026. Several media articles released in mid-2024 sought to have the exemption (which was to expire on 31 December 2024) reviewed and extended. A petition to the House of Representatives asked the House to prioritise a review of the exemption and extend it for at least five more years to aid in providing the cruise industry with stability and confidence.

We believe that passenger carriage raises many different issues to cargo carriage that it would be more coherent to treat them separately in the legislation, so that provisions can be designed to take account of those differences.

We also believe it is necessary to assess what amendments may be required in the Act to provide certainty for cruise ships currently exempt from the Act and to ensure passengers are not inappropriately treated under the Act.

In addition, we believe that the Act should support the growth of an Australian-flagged cruise industry while recognising the role of foreign flagged vessels in specific segments of the industry.

Consultation questions

9. Do you think that passenger travel (cruise ships and ferries) should be treated separately in the legislation to other coastal trades? Why/why not?
10. How can coastal trading regulation be improved for passengers and the Australian tourism industry?
11. How can coastal trading regulation be improved to support the Australian-flagged cruise industry?

4. Future of Australian shipping

Shipping activity is set to increase around Australia in the future. Most offshore oil and gas projects in Australia will be decommissioned in the next 30 years, with some being decommissioned in the next decade. About \$60 billion worth of offshore decommissioning activity is expected to occur in Australia over the next 30 to 50 years. Similarly, the Government is investing in offshore wind development in six priority areas around Australia and shipping will be required to move materials to and from offshore wind sites and local ports to build them and then to regularly maintain the wind farms.

The definition of coastal trading under the Act is limited to vessels used for or in connection with a commercial activity; and engaged in:

- interstate trading and/or passenger transport, or;
- intrastate trading and interstate trading; or
- intrastate trading and the Minister has declared that the Act applies to the particular vessel (upon application of the vessel owner) under s 12 of the Act.

⁸ *Coastal Trading (Revitalising Australian Shipping) Act 2012 Section 11 Exemption for Cruise Vessels 2023.*

It does not apply to passenger and cargo movements from outside Australia coming into Australia or vice versa. It also does not apply to smaller vessels operating in the context of offshore industries and to vessels operating to and from an offshore facility.

Given what we know about the future of Australian shipping, we would like to know if you think the definition of coastal trading under the Act is sufficiently broad to accommodate for Australia's increased shipping activity.

Consultation questions

12. Is the current definition of coastal trading sufficiently broad to encompass relevant activities in the maritime industry today and in the future?
13. Does the current definition of coastal trading account for or include emerging maritime developments and investments?

4.1 Strategic Fleet Taskforce recommendations

The Strategic Fleet Taskforce noted that strategic fleet vessels are likely to be deployed on Australian coastal trades, either on a fully-dedicated basis—such as high-volume, high-frequency dry bulk trades—or on a partial basis as part of a near-region international trade⁹. This means they will likely operate under Australia's coastal trading regulatory framework and it is important that strategic fleet vessels can sustainably maintain coastal trading operations where it is important to their operating structures.

In their recommendation to Government to review the Act, the Strategic Fleet Taskforce considered that the following should be key considerations of the Review:

- That a strategic fleet ship be defined.
- Ensure that cargo volume and trade (including strategic fleet cargo/trade) on general licence vessels are not undermined by the awarding of temporary licences.
- A general licence holder (including a General Licence owner/operator of a strategic fleet ship) be given the first right of refusal to arrange for a temporary licence ship/s to carry cargo in the trade of the general licence ship/s cargo in excess of that able to be transported by its general licence ship/s.
- If the general licence ship owner/operator does not exercise that right, the owner, charterer, master or agent of a vessel, or a shipper (as defined in the Act) have the opportunity to apply for a temporary licence to carry that cargo/ trade.
- That the s 33 'Comments by third parties' provision in the Act be strengthened to provide for monitoring, reviewing and scrutinising the awarding of temporary licenses in accordance with the principles outlined above.¹⁰

With the proposed new Object of the Act outlined at Section 2.1 in mind, we would like to better understand how the Strategic Fleet Taskforce considerations may operate.

Consultation question

14. How can the Act ensure that Strategic Fleet vessels operate competitively to help grow the Australian maritime industry?
15. Beyond the recommendations from the Strategic Fleet Taskforce, what else is required to ensure the Australian shipping industry can continue to grow?

⁹ Strategic Fleet Taskforce: Final Report, p 43, November 2023.

¹⁰ Recommendation 6, Strategic Fleet Taskforce: Final Report, November 2023.

16. Should strategic fleet vessels be treated differently to other general licence holders? Are there any unintended consequences of treating a strategic fleet vessel in a different way to a general licence holder?

4.2 Addressing workforce supply challenges

The 2024 Workforce Plan¹¹ from the Transport and Logistics Jobs and Skills Council reported that workforce planning and development for maritime initiatives need to commence immediately to address the ongoing decline in supply of maritime workers. Current shortages in the maritime workforce have been further exacerbated by long lead times for training, with some highly-skilled roles requiring up to 10 years of training before receiving AMSA approved Standards of Training, Certification and Watchkeeping (STCW) qualifications.

The Strategic Fleet Taskforce identified that a major barrier to increasing the number of Australian seafarers has been the limited access of training berths available for seafarers to undertake their mandatory sea-time. This shortage in available vessels for trainees has been the result of a compounding of factors including vessel operators taking on the high costs of training, the decline in the number of Australian operated ships, and a lack of alternate pathways for self-funded seafarers to carry-out their training.

As a part of this Review, we are assessing whether the Act supports the long-term sustainability of an Australian strategic fleet. A key objective to the strategic fleet is to support a training and workforce environment that encourages and grows Australia's sovereign maritime skills. With this in mind we would like to understand how or if the Act may further support this objective and address workforce supply challenges identified by the Strategic Fleet Taskforce and the Transport and Logistics Jobs and Skills Council's 2024 Workforce Plan.

Consultation question

17. How can the Act support a training and workforce environment that encourages and grows Australia's maritime workforce and sovereign maritime skills?
18. The Strategic Fleet Taskforce recommended that the Government explore opportunities to partner with other countries and with non-Australian shipping companies to secure additional shipping capacity to supplement the capability of the strategic fleet that may be required in times of a national emergency¹². How can the Act enable or support access for seafarers from other countries that Australia partners with to work on Australian vessels?
19. Should Temporary Licence holders be required to provide training berths for a specific number of Australian nationals?
20. Do the current requirements for temporary licence holders to pay Schedule A wages under the *Fair Work Regulation 2009 r 1.15E* provide an effective incentive for foreign vessel owners to engage Australian vessels and crews?

7. Other relevant matters

The Reviewers invite any additional insights or comments stakeholders would like to provide to inform the Review.

21. Apart from the offshore industry, strategic fleet and maritime workforce, are there any other areas of maritime development that we should consider in our Review of the Act?

¹¹ Maritime Industry 2024 Workforce Plan.

¹² Recommendation 15(b), Strategic Fleet Taskforce Report, 2023.

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22. Are there any other issues you would like to raise that you consider relevant to phase 1 of the Coastal Trading Act Review?