MUA Submission:

Independent Review of the Coastal Trading Act Consultation

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Submitted via email to strategicfleet@infrastructure.gov.au

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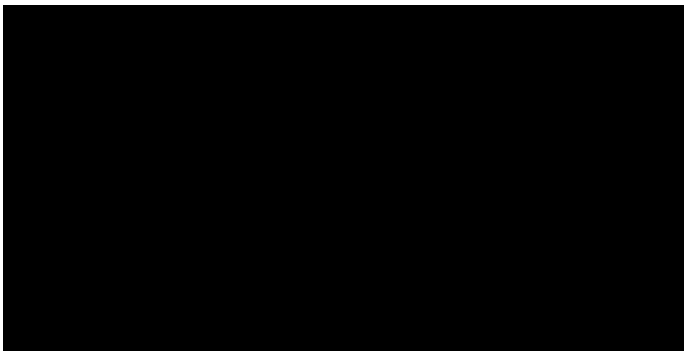

About the MUA

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

The MUA represents approximately 13,000 workers in the shipping, offshore oil and gas, aquaculture, stevedoring, port services and commercial diving sectors of the Australian maritime industry.

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Introduction

The Australian shipping and maritime industries are vital components of national transport infrastructure, integrated with the functionality, productivity and efficiency of other industries such as manufacturing, agriculture/aquaculture, construction, resources, energy and tourism. 10 per cent of the world's sea trade passes through Australian ports and Australia relies on sea transport for 99 per cent of its international trade (by volume). In 2020–21, the value of Australia's maritime exports was $354.8 billion, while Australia's maritime imports were valued at $246.6 billion. This involved 30,613 ship port visits by some 6,300 individual ships.[1]Globally Australia is the fourth largest user of ships.[2]

These levels of shipping activity demonstrate there are sufficient volumes of coastal trading in Australia to support Australian registered ships and a Strategic Fleet. Australia's shipping freight task is not being serviced by Australian flagged and crewed ships because our coastal trading and shipping registration regime allows almost unrestricted use of foreign vessels for domestic trading.

The Explanatory Memorandum accompanying the original *Coastal Trading (Revitalising Australian Shipping) Bill* acknowledged that: *Australia's coastal trading framework is one of the most liberal in the world. Foreign flagged and crewed vessels can operate in the domestic economy under 'permit', which allows these vessels to be exempted from certain Australian regulatory requirements. Coastal shipping is the only sector in the Australian domestic transport industry where lower paid foreign workers are employed. While the Fair Work Regulations 2009 extended award coverage to a number of permit vessels, foreign flagged vessels continue to enjoy favourable cost structures when compared to Australian licensed vessels.*[3]

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[1] Bureau of Infrastructure and Transport Research Economics (BITRE), Australian Sea Freight 2020-21, https://www.bitre.gov.au/sites/default/files/documents/Australian%20Sea%20Freight%202020-21.pdf

[2] United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2019,* https://unctad.org/en/ Publications Library/rmt2019_en.pdf. Note that the Report of the Senate Rural and Regional Affairs and Transport References Committee Inquiry into Policy, regulatory, taxation, administrative and funding priorities for Australian shipping says at Para 1.33 that Australia is the fifth largest user of shipping.

[3] The Explanatory Memorandum says that voyage means the movement of a vessel from one port to another port in a way that would satisfy paragraph 7(1)(a), (b) or (c). This is a departure from the notion that a voyage is 'empty ship to empty ship' and that various legs or segments form part of the whole movement. Having regard to industry comments, the definition of voyage adopted is a movement of a vessel from one port to another port where the movement constitutes coastal trading within the meaning of that term in section 7. This may be the origin of the Fair Work Ombudsman's (FWO) office fact sheet advising that the FW Act applies (and by definition the Seagoing Industry Award), from the day that loading begins until the day that unloading ends i.e. neither the FW Act nor Award applies to the ballast leg of a voyage. This is notwithstanding that the CT Act uses the loading date as the commencement point of a 'voyage' in contrast to the previous arrangements which used the sailing date. This suggests that the

The few restrictions we have do little by way of deterring the use of foreign vessels or encouraging the use of Australian vessels. As the Strategic Fleet Taskforce (the Taskforce) report concluded there can be a commercially viable Australian shipping with the right policy settings. The Taskforce and previous government and senate inquiries have all noted that the decline in the number of Australian vessels is cause for concern and that there are good economic and national security grounds to support an Australian merchant fleet.

Nearly all coastal trade is no longer under Australia's control. What was once domestic trading is now allowed to become part of international trade routes. There is a fundamental incompatibility between the excessive use of foreign ships with foreign crews on Temporary Licences (TL) in coastal trading and the need to build supply chain and defence security and resilience. There is an urgent need for the nation to mitigate its dependency on foreign shipping in both domestic and international trades.

For example, Australia is completely reliant on imported petroleum products, carried by sea, to keep the economy moving. Many manufacturers and resources companies have experienced costly bottlenecks and unreliability caused by just-in-time supply chains reliant on cheap foreign ships in the name of flexibility and price competition. This model is also characterised by a disincentive to provide adequate training, exacerbating the worldwide shortage of seafarers, which perversely drives up the cost of shipping.

Since the early 1990s, many developed countries have implemented fiscal and policy measures to support their domestic industry. Access to beneficial taxation and other arrangements further reduces operating cost differentials. The inability of Australian vessels to compete on a level playing field with international operators has led to the current decline.

Australia's disappearing merchant fleet has implications for Australia's defence strategy, our supply chain resilience, economic and fuel security and capacity to service the country's needs in times of emergency.

In this context, the MUA welcomes the Government's commitment to address the recommendations of the Taskforce including establishing the pilot Strategic Fleet and a review into the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CTA) and *Shipping Registration Act 1981 (SRA)*. It is the MUA's view that the CTA has failed to achieve what it originally set out to do and is in urgent need of reform to meet what should be its key objective: to revitalise Australian shipping by creating the policy, fiscal

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Act was extending the definition of a voyage, not limiting it as the FWO has done in its fact sheet – see FWO Maritime industry – workplace rights and entitlements - https://www.fairwork.gov.au/sites/default/files/migration/723/Maritime-industry-workplacerights-and-entitlements.pdf. It has never been conceded by the maritime unions or the ITF that ballast voyages are not covered by the FW Act. This issue has not been tested in court to date.

and regulatory incentives to increase the use of Australian registered vessels and increasing access to seafaring employment by Australian nationals.

Alongside reforms to the CTA, there are a series of other reforms and enabling legislation required in industrial relations, taxation, training, immigration and customs and defence. Together, these changes will revitalise Australian shipping, signal to the market that the Government is proactive in its support of Australian shipping and ensure that the Strategic Fleet is sustainable and successful.

Reforms that the MUA are seeking is to restore the preference to use General Licence vessels when they are suitable and available, to create a stable regulatory environment and provide internationally competitive fiscal incentives to encourage an Australian shipping industry and support the Strategic fleet. We urge the Reviewers to take a wholistic approach because if reforms in other areas are not made it will compromise the effectiveness of the CTA.

The CTA has not achieved its aims with the Strategic Fleet Taskforce reporting that the Australian fleet currently stands at only 15 vessels over 2000 deadweight tonnes (DWT) – at the time of writing, the 4 international vessels have gone, meaning that in a crisis, Australia would have great difficulty accessing and controlling the maritime assets that we might require.

The key flaws (and proposed remedies) of the Act are:

1. The Minister is given an unconstrained discretion (s 34(2)) when deciding whether to grant a temporary licence. This is achieved using the word "may" and s 34(2)(g) that enables the Minister to take into account any other matter the Minister thinks relevant.

   The MUA recommends that this is remedied by removing s 34(g)(2) and replacing the word "may" with "must". The list of factors that the Minister then is to have regard to are tightened in 2 ways. Firstly, by ensuring the applicant has not breached prior licence conditions and relevant laws. Secondly, by amending the object of the Act (s 3) so that it reflects the actual intent of the Act – to provide primacy to general licenced vessels. The Minister is required to have regard to the object of the Act (s 34(2)(f)).

2. Section 31 in providing a general licence holder a right to lodge a notice in response to an application for a temporary licence fails to provide primacy to general licence holders.

It is recommended that contestability rules be reformed in the Act. These are to be modelled on the Canadian Transportation Agency guidelines.

3. The Act provides applicants for a TL with too much flexibility – the categories of applicant are very broad and include both an agent of a vessel and a shipper; the vessel does not need to be identified, the employer(s) do not need to be identified; and the application can be varied. The latter has enabled applicants to avoid altered availability of general licenced vessels.

   It is recommended that the categories of applicants be restricted, that the application relates to a particular vessel, that the identity of the employer(s) be specified on the application and the ability to vary the application removed.

4. The Act fails to require an applicant for a temporary licence to specify a reason as to why the cargo/passengers cannot be carried by a general licence vessel.

   It is recommended that applicants must provide such a reason.

5. The Act provides the Minister with an unfettered discretion to exempt vessels from the operation of the Act.

   It is recommended that section 11 is removed.

6. The Act does not cover intrastate voyages (unless they voluntarily opt in (s 12)) This creates a patchwork of regulation in Australia.

   It is recommended that section 12 is removed to effectively regulate coastal trading. Alongside this the meaning of coastal trading will need amendment to include intrastate voyages and clarify the meaning of a voyage for the purposes of applying the *Seagoing Industry Award 2020* (the Award) and in future the current rates ruling.

7. There is no obligation for a licence holder to inform the employer(s) of the non-national seafarers engaged that the vessel is engaged in Coastal Trade. This led the Federal Court in *Fair Work Ombudsman v Transpetrol TM AS* [2019] FCA 400 to dismiss a claim for penalties following contraventions of the Fair Work Act 2009 as there was no legislative requirement that Transpetrol be made aware of its changed legal obligations. Indeed the contraventions occurred in circumstances where no legislation, including the CTA and the Fair Work Act, required the person who applied for a temporary licence to obtain the consent of, or inform, the owner, demise charterer or master of a ship about the application of the Fair Work Act to her on any voyage covered by a temporary

licence or even to inform the owner, demise charterer or master that the voyage was occurring under a temporary licence.

It is recommended that a condition of licences be that the employer(s) is notified by the licence holder of the grant of the licence.

8. Unlike the position that existed under the *Navigation Act 1912* before 1 July 2012 there is no requirement that Customs be provided with evidence by the ship's Master that seafarers had been paid their wages before the departure of a vessel from Australia.

   It is recommended that a provision modelled on section 289 of the *Navigation Act 1912* before 1 July 2012 be inserted into the Act.

9. The domestic component of the cruise ship sector – largely expedition cruise vessels service a uniquely Australian tourism experience that is different from large international passenger cruise ships. All other tourism sectors and operators are subject to domestic competition and regulations. The current exemption for all cruise ships mean domestic expedition cruise ship operators face unfair international competition.

   It is recommended that the current cruise ship exemption from the CTA be repealed to allow for contestability provisions and the Minister be required to refuse an application for a TL when the vessel is an expedition cruise vessel.

10. There is no recognition or process to regulate foreign vessels consistently engaged in Australian coastal trading. There is a fundamental design flaw in the CTA that effectively preferences TL vessels rather than GL vessels.

    It is recommended that the Minister refuse an application for a temporary licence when the vessel has been operating under TLs for an aggregate of 90 days in the 180 days prior to the lodgement of the TL application. This is complemented by the Object that the Minister now must have regard to ensure that where a type of cargo is carried from the same loading port on 3 or more occasions in any 12-month period that the cargo is carried on a general licensed vessel. This is to prevent TL holders from using different vessels to avoid their obligations to pay appropriate wages and resolve the design flaw that provides preferential treatment to TL holders.

    The MUA supports the principle that where there is no suitable and/or available GL vessels to meet a cargo owner's requirements, a TL vessel can be used to provided the TL vessel's crew are paid Australian wages and conditions (currently under the Award and in future under a current rates ruling).

Further, subject to reforms to the Maritime Crew Visa (MCV) system there should be a provision to use Australian national seafarers where available on foreign vessels engaged in coastal trading.

The MUA advocates for a system that is able to preference and incentivise the use of Australian vessels and Australian crew rather than designing measures that disincentivise them.

Recommendations

Recommendation 1: For the Review to support Option two – noting that to achieve the Object there has to be a preference for the use of a GL vessel, with the following MUA's suggested additions of:

- *ensuring that where a type of cargo is carried from the same loading port on 3 or more occasions in any 12-month period that the cargo is carried on a general licensed vessel.*
- *supporting the development and maintenance of a strategic fleet*

Recommendation 2: For the Review and Government to implement MUA's suggested remedies to the CTA to restore primacy to GL vessels while allowing the use of TL vessels in specified and limited circumstances.

Recommendation 3: For the Review to examine the Canadian Coasting Trade Act and suite of supporting regulations and guidelines as an example of how this can work for the CTA.

Recommendation 4: To ensure that GL vessels are not being undermined, GL vessels must have first right of refusal before the work is offered to a TL vessel. Secondly, there must be a robust commercial negotiation to avoid circumvention of a GL holder's right to offer their services. In addition, s33 Comments by third parties provision need to be strengthened to provide for monitoring, reviewing and scrutinising the awarding of TLs. Finally, a TL holder should be held to the same shipping, migration, industrial relations and environmental standards when engaging in coastal trading in Australian waters.

Recommendation 5: To ensure TL vessels are not engaging in coastal trading year after year, the MUA recommends that the Minister refuse to grant an application for a TL when the vessel has been operating under TLs for an aggregate of 90 days in the 180 days prior to the lodgement of the TL application. This is complemented by ensuring that where a type of cargo is carried from the same loading port on 3 or more occasions in any 12-month period that the cargo is carried on a general licensed vessel. This criteria is set to prevent the preferential treatment of TL vessels over GL vessels and for the onus to be on the TL holder for the reasons why a GL vessel cannot be engaged. It

will also prevent TL holders from using different vessels to avoid their obligations to pay appropriate wages and conditions.

Recommendation 6: The current cruise ship exemption should be repealed to allow for contestability provisions from GL holders so there is an opportunity for them to gain entry into this sector and that expedition cruise ships be only operated by vessels registered on the AGSR with a GL.

Recommendation 7: The Review make recommendations on a package of reforms that will support the successful operation of the CTA, the Strategic Fleet and ensure that GL vessels are not being undermined by shipping related policies and regulation across all Government portfolios and agencies.

Recommendation 8: A definition of strategic fleet and requisitioning arrangements be inserted into the CTA once the pilot review is complete. A strategic fleet levy should be introduced to support the long-term sustainability and viability of the fleet.

Recommendation 9: Commercial vessels should by default fall under the Navigation Act and the IMO Convention safety standards it implements.

Recommendation 10: Restore coverage of the National Law to be closer to the types of vessels originally covered by the National Standards for Commercial Vessels (NSCV) that underpin the National Law. All commercial vessels must be regulated by the *Navigation Act 2012*, except those which:

- Voyage only within 12nm of the coast and a safe haven.
- Are 24m or under in length.
- Carry less than 50 passengers.
- Are fishing vessels under 35m in length.
- Do not carry dangerous or polluting cargoes, including oil, gas, ammonia and hydrogen.
- Do not proceed on voyages of more than 36 hours in length.
- Do not carry out 'high risk' operations.

Recommendation 11: That a full and transparent review of the seafarer qualification framework and associated VET certificates and units of competency be carried out. Domestic and international seafarer qualifications must be streamlined in order to have STCW standards of competence integrated at all levels to allow seafarers to develop their career and training in a straightforward process. Incorporating the higher standards of STCW, at an appropriate level, into the units of competency of the VET certificates will increase the overall standards of Australian seafarers, reduce the complexity of the system and reduce overall training costs. It is also recommended that all personnel working on any type of vessel must have STCW-compliant survival and fire prevention training.

Recommendation 12: The CTA can support access to foreign seafarers through our immigration system on the following conditions:

- It is a transitional arrangement to assist with Australian national seafarer shortages on AGSR and GL vessels
- A training and transition plan for the vessel to become fully Australian crewed will need tripartite agreement
- Same job, same pay obligations will apply for foreign seafarers working on Australian vessels, including the right to collectively bargain.

Recommendation 13: For immediate action to be taken by the Minister for Workplace and Employment Relations to remove the requirement for TL holders to pay Schedule A wages only after the two Award-free voyages as there is no basis for it to remain. The Review should recommend including the ballast leg of the voyage in the CTA for the purposes of paying Schedule A. The Review should also consider how the current rates ruling could be implemented in the future.

Objects of the Act

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

Out of the options listed by the Reviewers the MUA would most agree with Option two. Options one and three will neither clarify nor address the existing ambiguity in the Object of the Act. Notwithstanding how much weight is given to each of the Objects, the fundamental flaw in the Act is that the Minister or Delegate need not have *any* regard for the Object and may or may not take any number of matters into consideration in the issuing of temporary licenses. Option two will at least explicitly reweigh in favour of Australian shipping.

The main object of the Act should be to promote a safe, efficient and viable Australian shipping industry by preferencing Australian registered vessels for carriage of coastal cargo and passengers. The MUA is supportive of the other listed Objects in Option Two.

Recommendation 1: For the Review to support Option two – noting that to achieve the Object there has to be a preference for the use of a GL vessel, with the following MUA's suggested additions of:

- *ensuring that where a type of cargo is carried from the same loading port on 3 or more occasions in any 12-month period that the cargo is carried on a general licensed vessel.*
- *supporting the development and maintenance of a strategic fleet*

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

The MUA recommends that the following should be added to Option Two:

- *ensuring that where a type of cargo is carried from the same loading port on 3 or more occasions in any 12-month period that the cargo is carried on a general licensed vessel.*

  The current system of issuing a TL can be easily gamed to avoid meeting any Australian obligations a foreign vessel may have. This requirement allows the Minister to consider whether there are suitable and available GL vessels, to preference to the GL holder while allowing for to use of a TL vessel if the GL holder cannot provide the service.

  The Taskforce final report noted approximately 40-50 licenses are granted each year. In 2021, 504 unique foreign vessels undertook 2,309 voyages under a Temporary Licence. In 2021, 30 foreign-flagged vessels operating under Temporary Licence recorded loading dates in 6 or more months in 2021 and performed 938 (40.6 per cent) of the 2,309 total voyages performed. This indicates that a relatively small pool of organisations seek TLs (using multiple foreign vessels) but this group services nearly all of Australia's coastal trading requirements.

- *supporting the development and maintenance of a strategic fleet*
  - The CTA should future proof and protect the strategic fleet by including a definition of a strategic fleet vessel and requisitioning provisions once the review of the pilot is completed.

To give effect to Recommendation 6 of the Taskforce, the MUA also proposes a modification on how the Act will achieve its object (highlighted in red):

(2) This Act aims to achieve its object by the following means:

(a) ensuring that a vessel that is used to engage in coastal trading under a general licence has unrestricted access to Australian waters and is given preference to carry cargo and/or passenger over a vessel authorised to engage in coastal trading by either a temporary or an emergency licence;

(b) ensuring that a vessel that is used to engage in coastal trading has access to Australian waters under a temporary licence that is limited in time and to voyages authorised by the licence;

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

Australian cargo owners use foreign-flagged vessels to carry international and domestic cargoes. Combined with the ease for a wide range of applicants (including cargo owners) to apply for a TL, has given cargo owners unprecedented power to use and

charter their own foreign-flagged and crewed vessels with lower cost structures. Importantly, as noted by the Taskforce the changes *did not include a mechanism to enable Australian vessels to get preferential access to the carriage of domestic cargo under long-term contracts of affreightment*. Our proposed amendment seeks to address this gap.

Recommendation 1: For the Review to support Option two – noting that to achieve the Object there has to be a preference for the use of a GL vessel, with the following MUA's suggested additions of:

- *ensuring that where a type of cargo is carried from the same loading port on 3 or more occasions in any 12-month period that the cargo is carried on a general licensed vessel.*
- *supporting the development and maintenance of a strategic fleet*

Current coastal trading regulatory framework

Is the current licencing framework fit-for-purpose?

No. The deficiencies in the CTA and its licencing framework has already been examined by the Taskforce with the recommendation that it be reviewed ahead of legislative changes. The Taskforce made specific recommendations on key elements that requires reform (recommendation 6). The MUA broadly supports the Taskforce's recommendations on the areas requiring reform. The MUA has specific suggestions on the legislative amendments required for the Review to consider (Appendix A – MUA suggested amendments to the CTA).

It is important to for the Reviewers to note that in relation to the CTA review the Taskforce recommended that:

The review should occur after the design of the assistance and taxation measures have been completed so that specific legislative provisions reflect implementation arrangements for the strategic fleet.

The MUA understands that the government has not commenced designing or consulting on assistance and taxation measures as recommended by the Taskforce (recommendations one, three and ten). This should commence as a matter of priority and urgency. Reforms to the CTA and the *Shipping Registration Act 1981* legislation cannot be separated from the other reforms that will give effect to both these Acts and support the Strategic Fleet.

The current licensing regime does not address the cost gap between Australian and foreign ships or establish a licensing regime that preserves domestic cargo for Australian registered ships. Without a package of reforms the Strategic Fleet and plan to support Australian registered vessels will fail.

The licensing regime should be more a commercially oriented to provide for a coastal ship licencing scheme that preferences for Australian registered ships and Australian national seafarers balanced against the opportunity for shippers to use foreign ships under specified and limited circumstances. Key reforms are to:

- Amend the Object clause to remove ambiguity and to clarify that the Act aims to support Australian registered ships;
- Extend the coverage of the CT Act to include intrastate trade;
- Provide for temporary licences to be issued to a ship, rather than to the voyage of a ship; as in the requirement for General Licenced (GL) ships;
- Restructure the procedure for the issue of Temporary Licences (TLs) for cargo ships so it is based on commercial negotiations, not on decision making by Departmental officials as the Minister's Delegate;
- Restructure the GL holder contestability provisions for cargo ships by creating a requirement for commercial negotiations between the GL holder and shipper of the cargo to settle the terms for provision of a GL ship/s in a trade and for settling an appropriate balance between GL ships and TL ships in each trade;
- Provide for the primacy of the role of ship providers, particularly GL holders, rather than primacy on the role of shippers (cargo interests);

The criteria and process for the granting of a TL undermine the CTA's existing and proposed Object. The decision-making criteria lists matters the Minister *may* consider not matters they must consider to give effect to the Object of the Act. It is only when the Minister receives a notice in response that they must have regard to certain matters. Consequently, where there are contradictory objects there is no process to determine what takes precedence. The MUA proposes amendments to the wording with a list of matters that the Minister must consider with appropriate weighting (Appendix A).

The Meaning of Coastal Trading

The Act will also benefit from clarifying the meaning of coastal trading (s7) as we have seen TL holders trying to avoid their obligations under the Fair Work Act by disputing the meaning of a voyage despite advice from the Department and FWO. While there may be concerns about the complexity of Australia's Award and IR system it does not appear to hamper foreign vessels' ability to find loopholes and ways to shortchange their crew.

To provide clarity, coastal trading must apply to all voyages and the whole voyage, not just the laden leg. Crew are still required and are expected to work during the unladen leg, they should be entitled to be paid Australian wages and conditions (currently, Schedule A of the Award although the MUA proposes transition to a 'current rates ruling discussed later in our submission).

A voyage should be defined in the CTA for the purposes of qualification for the Seagoing Industry Award (the Award) – that is a single loaded cargo in a single loading port that

has multiple discharge ports are deemed to be separate voyages. This is consistent with the interpretation by the FWO and the Department.

The CTA must also be clear that the carriage of cargo and number of coastal voyages is the benchmark for qualification of the Award. The changing of charterers does not reset on the number of voyages under the CTA. This has again been clarified by the Department.

If our recommendation that foreign seafarers should be paid under the Award or our proposed current rates ruling while they are in Australia then the date of the third voyage must be made explicit in the CTA. That is the date that a vessel commences the loading of cargo. Employers want to work on the basis that the third voyage would be deemed to have commenced upon the completion of cargo on the 2nd voyage. The Department of Infrastructure and Transport has agreed that it should be from the date that a vessel commences the loading of cargo.

The MUA has made suggested amendments to reflect this position in Appendix A.

License Applications

Currently, organisations including ship owners, charterers, masters or agents of a ship, or shippers can make license applications. There is also no obligation to publicly disclose the employer of crew. This makes it difficult to determine who carries responsibility/obligations under different sections of the Act. The MUA recommends this be limited to a ship owner or charterer.

Are there alternative coastal trading regulatory frameworks that are better suited to Australia's coastal trading market? Please elaborate.

The MUA recommends Reviewers examine the Canadian *Coasting Trade Act* and guidelines as it is the most similar in intent to Australia but has had more success in encouraging the use of Canadian registered vessels and use of Canadian national seafarers in Canadian coastal shipping. This Act aims to promote 'a level playing field by protecting Canadian shipowners from others that benefit from lower wage crews and/or lower safety standards. Foreign and non-duty paid ships are prevented from operating in the cabotage market unless a licence has been granted, which means that only Canadian flagged and duty paid vessels are allowed in the cabotage trades [when such vessels are available and suitable as defined in the Canadian coastal trading guidelines] and on top of this they must be manned by Canadian crews.'[4]

4. A Casaca, D Lyridis, 'Protectionist vs liberalised maritime cabotage policies: a review', *Maritime Business Review*, Vol. 3, No. 3, 2018, p. 222.

The Canadian Act has a cascading order of priority – first to Canadian registered, duty paid vessels then to Canadian registered, non-duty paid vessels under licence and finally to foreign vessels under license.

There are further provisions to ensure Canadian crew are used first and foreign vessels and crew only if there are no suitable and available vessels and crew. This is supported by its migration laws. The requirements are more robust and the language in the Act reflects this. It also contains a definition of what suitable and available means.

The MUA understands that the Parliamentary library in 2021 provided a report to Senator Carol Brown on the Canadian Act that proved helpful to the Senator. We recommend the reviewers request a copy of this report from the Parliamentary library.

Recommendation 3: For the Review to examine the Canadian Coasting Trade Act and suite of supporting regulations and guidelines as an example of how this can work for the CTA.

How can Australia's coastal trading regulatory framework better support the growth of the Australian industry while still enabling foreign vessels to engage in coastal trading?

The MUA's position is our coastal trading framework needs to preference GL holders while allowing for the use of TL holders under certain conditions. It is currently weighted heavily in favour of foreign vessels leaving our supply chains, energy – including future green energy and fuel security, defence and maritime workforce at risk. This has been the result of cargo owners exploiting the CTA to their advantage and policy/regulatory failure to create a level playing field across shipping, tax, migration, industrial relations, government procurement and environmental standards.

As recommendation 6 of the Taskforce report outlines the CTA *must ensure that cargo volume and trade (including strategic fleet cargo/trade) on General Licence vessels are not undermined by the awarding of Temporary Licences*.

The proliferation in the use of TL vessels is actively impeding the introduction of GL vessels to be able utilise the contestability provisions and acts as a disincentive to use a GL vessel.

To ensure that GL vessels are not being undermined, GL vessels must have first right of refusal before the work is offered to a TL vessel. Secondly, there must be a robust commercial negotiation to avoid circumvention of a GL holder's right to offer their services. In addition, s33 Comments by third parties provision need to be strengthened to provide for monitoring, reviewing and scrutinising the awarding of TLs. Finally, a TL

holder should be held to the same shipping, migration, industrial relations and environmental standards when engaging in coastal trading in Australian waters.

In terms of the process for deciding a licence application the MUA recommends changing the word may to MUST on the following matters (red text are MUA additions):

(a) whether the applicant has previously held a licence that was cancelled;
(b) whether the applicant has been issued with an infringement notice under this Act;
(c) whether the applicant has previously breached a condition of a licence;
(ca) whether the applicant has been investigated by the Fair Work Ombudsman for non-compliance with the Fair Work Act;
(cb) whether the applicant has been investigated by AMSA for non-compliance with the MLC
(cc) whether the applicant has been investigated for non-compliance with the *Modern Slavery Act 2018*.
(cd) whether the applicant has been investigated for non-compliance with the *Occupational Health and Safety (Maritime Industry) Act 1993*.
(ce) whether the applicant has been investigated for non-compliance with the *Navigation Act 2012*
(cf) whether the applicant has been investigated for non-compliance with the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*
(d) the object of this Act

To improve transparency, information should be published on the department's website and include the name and IMO number and the name of the employer(s) of each seafarer working on the vessel when the vessel is used to engage in coastal trading.

The MUA proposes that references to the Modern Award in the CTA be replaced with a 'current rates ruling' by the FWC. The MUA is open to a transition period for this to occur. Our rationale for this change is discussed later in our submission under the FWC regulations.

Complementary reform in other policy areas must occur to ensure the operability of the CTA (discussed later in our submission). For the MUA, rather than unfettered access to coastal trading, foreign vessels will have boundaries set to create a level playing field.

Recommendation 4: To ensure that GL vessels are not being undermined, GL vessels must have first right of refusal before the work is offered to a TL vessel. Secondly, there must be a robust commercial negotiation to avoid circumvention of a GL holder's right to offer their services. In addition, s33 Comments by third parties provision need to be strengthened to provide for monitoring, reviewing and scrutinising the awarding of TLs. Finally, a TL holder should be held to the same shipping, migration, industrial relations and environmental standards when engaging in coastal trading in Australian waters.

Temporary licences

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?

The MUA has already discussed in our submission some of the issues with the licensing framework including TLs. The downward spiral in the number of Australian trading ships operating under medium to long term contracts of affreightment (COA) to service the manufacturing and agricultural industries has consequentially increased our reliance on the spot shipping market. This means Australia will lose complete control of ship scheduling and opportunities to create efficiencies in coastal trading using a balanced mix of Australian ships and foreign ships with a TL as was intended by the CTA when it was first introduced. The CTA was intended to create opportunities to smooth out freight rates and utilise triangulation and cargo aggregation to reduce ballast legs, which keeps freight rates lower. Our recommendations about the Object, and the meaning of coastal trading and a creating a framework that preferences GL vessels in the first instance aims to restore the balance between Australian and foreign vessels. To be clear, by balance we do not mean a 50/50 split, rather GL vessels should be servicing Australia's coastal trade with the use of TLs where a GL vessel is not suitable or available.

To this end, the MUA recommends that the Minister refuse to grant an application for a TL when the vessel has been operating under TLs for an aggregate of 90 days in the 180 days prior to the lodgement of the TL application. This is complemented by ensuring that where a type of cargo is carried from the same loading port on 3 or more occasions in any 12-month period that the cargo is carried on a general licensed vessel. This criteria is set to prevent the preferential treatment of TL vessels over GL vessels, for trading requirements and viability of the route to be assessed while closing the loophole that allows foreign ships to continuously trade in Australia for years. It will also prevent TL holders from using different vessels to avoid their obligations to pay appropriate wages and conditions.

Our suggested amendments to the application process are contained in Appendix A. To summarise these amendments are to:

- Set out the reasons why a GL holder cannot be used to engage in the work
- That an application must relate to one vessel only
- Transparency on seafarer rights including a statement that they will be provided with at least the minimum pay and conditions provided by the FWA and in future the current rates ruling
- Right of the holder of a general licence to advise the Minister that they intend to apply for a TL to carry the passengers or cargo specified in the application

- If a notice is given, set out the process for the Minister to decide with the provision that the Minister must have regard to:

    (a) whether the technical characteristics of the referred to in each notice are suitable for carrying the passengers or cargo specified in the application;

    (b) the commercial and economic implications of the passengers or cargo being carried on a vessel referred to in a notice;

    (c) the underlying rationale as to why the dates stipulated in the application are crucial and why alternatives could not be considered;

    (d) the capability of each vessel referred to in the notice(s) to be at the required port on time;

    (e) location of each vessel referred to in the notice(s) and repositioning delay;

    (5) For the purposes of subparagraph (4) the Minister can only take in account commercial/economic implication where the applicant for the application provides evidence that clearly demonstrates:

    (f) the necessity of using the vessel in the application for the commercial viability of the carriage of the passengers or cargo; and

    (g) the higher costs of using the vessel referred to in the notice(s) would render the carriage of the passengers or cargo commercially /economically unviable.

- In determining whether a vessel is suitable and available the Minister must have regard to the following:

    (a) whether the technical characteristics of the vessel in the GL Response Application are suitable for carrying the passengers or cargo specified in the application;

    (b) the commercial and economic implications of granting the GL Response Application;

    (c) the underlying rationale as to why the dates stipulated in the application are crucial and why alternatives could not be considered;

    (d) the capability of the vessel in the GL Response Application to be at the required port on time;

    (e) location of the vessel in the GL Response Application and repositioning delay;

Recommendation 5: To ensure TL vessels are not engaging in coastal trading year after year, the MUA recommends that the Minister refuse to grant an application for a TL

when the vessel has been operating under TLs for an aggregate of 90 days in the 180 days prior to the lodgement of the TL application. This is complemented by ensuring that where a type of cargo is carried from the same loading port on 3 or more occasions in any 12-month period that the cargo is carried on a general licensed vessel. This criteria is set to prevent the preferential treatment of TL vessels over GL vessels and for the onus to be on the TL holder for the reasons why a GL vessel cannot be engaged. It will also prevent TL holders from using different vessels to avoid their obligations to pay appropriate wages and conditions.

Treatment of passengers

Do you think that passenger travel (cruise ships and ferries) should be treated separately in the legislation to other coastal trades? Why/why not?

How can coastal trading regulation be improved to encourage the Australian flagged cruise industry?

The MUA would like to respond to these two questions together. The cruise sector involves both a domestic component, largely expedition cruising and an international component. Under the changes we have proposed, the MUA does not believe it is necessary to treat international cruise ships separately. The MUA has proposed that incentives from tax to training are offered for cruise ships to register on the AISR to kick start an Australian industry (see our submission to the Shipping Registration Act).

For this sector our recommended reforms are:

- That the Ministerial exemption from the operation of the CTA that applies to cruise ships be repealed, in order to provide the opportunity for Australian GL holders to contest for cruise/passenger shipping routes/ itineraries;

- That expedition cruise ships be declared as a national interest shipping trade, route or market segment to be reserved for ships on the Australian General Shipping Register (AGSR) that are issued with a GL, designed to protect the expedition cruise sector from foreign competition.

  This sector is one that is subject to competition from foreign vessels who are not subject to Australian laws (as they are currently exempt from the CTA) even though they are exclusively operating in the domestic tourism market during cruise ship season and competing with Australian operators (see s34 Appendix A for our suggested amendment).

We argue that the uniquely Australian expedition cruise experience featuring Australian natural environments, regional foods and beverages, indigenous culture and history should only be delivered by cruise shipping operations with 100% Australian ownership and content.

- That the definition of a large cruise ship be amended from 5,000 GT to 20,000 GT and that the passenger delineation be increased from 100 to 200.

- That foreign operators authorised to undertake voyages under a TL should not be allowed to deviate from published routes/itineraries.

Recommendation 6: The current cruise ship exemption should be repealed to allow for contestability provisions from GL holders so there is an opportunity for them to gain entry into this sector and that expedition cruise ships be only operated by vessels registered on the AGSR with a GL.

Future of Australian shipping

Is the current definition of coastal trading sufficiently broad to encompass relevant activities in the maritime industry today and in the future? Please explain why.

Does the current definition of coastal trading account for or include emerging maritime developments and investments?

The current definition of coastal trading effectively captures coastal trading activities. The main exception we have observed is that domestically trading LPG tankers operating on a Temporary Licence regularly load LPG from a large international tanker at anchor off the Port of Brisbane and carry it to other ports. Yet this loading does not appear to be captured by the Temporary Licence system, perhaps because the anchored ship is not considered to be a port.[5] This has flow on impacts to the pay received by the ship's crew, and should be captured by future reforms.

There are many other maritime activities which take place in Australia, which are not captured by the definition of coastal trading or CTA. This includes the offshore oil and

[5] LPG tankers currently operating domestically on a Temporary Licence are the Gaschem Iliad, Gaschem Homer, and Gaschem Odyssey. These three ships have been operating in Australia on Temporary Licences since 2022. Origin Energy Contracting Limited has held this Temporary Licence and organised multiple ships to carry out this domestic trade since November 2013. Orgin Energy has carryied out 952 domestic Temporary Licence voyages during that time, an average of 86 voyages per year, not including the ones which load from the tanker regularly anchored in Brisbane.

gas industry, aquaculture, survey work, and likely the future offshore renewable energy industry (except to the extent that components may be loaded in one Australian port and discharged in another Australian port).

At this stage, we do not support expanding the definition of coastal trading to cover these other maritime industries. Care needs to be taken to get the settings right in coastal trading before expanding the application of the CTA to other parts of the maritime industry.

Australian shipping in Future Made in Australia programs and offshore renewables

In our submission to the review of the SRA we have offered recommendations to improve the use of Australian registered vessels in those parts of the Australian maritime industry which are not covered by the CTA.

This must also include leveraging the very substantial funding being provided by the federal government through Future Made in Australia programs, and the licencing decisions for offshore renewable energy generation and transmission under the *Offshore Electricity Infrastructure Act* (OEI Act).

Shipping is key service underpinning the net zero transformation, providing critical transport services to many renewable industries, as well as itself requiring new technologies for decarbonisation. Shipping will be an important part of the supply and value chains for renewable hydrogen and ammonia, low carbon liquid fuels, green metals, critical minerals, manufactured clean energy components, and other renewable industries.

In the USA, substantial federal support via the *Inflation Reduction* Act and a Federal Ship Financing scheme[6] has led to $6.9 billion in manufacturing and port investment, the establishment of 19 offshore wind manufacturing facilities, 15 offshore wind port terminals and 25 new vessels being built.[7]

As an island nation highly dependent on sea-transport Australia must develop its capabilities in decarbonised shipping technologies along with the required port infrastructure for refueling (bunkering) ships. Increased bunkering of international ships in Australia using renewable ship fuels is also an important economic opportunity as Australia develops it renewable fuel manufacturing capacity.

Offshore renewable energy Feasibility Licences currently include an assessment of the project's 'impact on, and contribution to, the Australian economy and local communities, including in relation to regional development, job creation, Australian industries and the use of Australian goods and services' (*Offshore Electricity*

[6] Federal Ship Financing Program (Title XI) | MARAD

[7] US Department of Energy, Building America's Clean Energy Future, accessed October 2024. Tick 'offshore wind' on the map.

Infrastructure Regulations 2022, s.26(4)(a)). This should be amended to specifically include the use of 'Australian-flagged vessels,' and this requirement should also be added to project Management Plans (the second stage of project licencing, required for a Commercial Licence to generate electricity).

In relation to Future Made in Australia programs and funding, the objective of strengthening domestic and international supply chains through the use of Australian flagged ships and Australian crew should be implemented in decision making for both the Net Zero Transformation Stream and the Economic Resilience and Security Stream. This would mean that Future Made in Australia funding applicants that make an effort to use Australian shipping should be given priority for funding over those that do not. Merit criteria rewarding the use of Australian flagged ships and crew must be implemented in each of the following programs and agencies, in addition to any other Future Made in Australia programs and other decarbonisation initiatives:

- all Rules, Plans and Guidelines and Merit Criteria made under the Future Made in Australia program
- FMiA funding delivered through the Australian Renewable Energy Agency (ARENA)
- FMiA funding delivered through Export Finance Australia
- Green Metals opportunities, for low carbon aluminium and steel (Department of Industry)
- Low carbon liquid fuels (Department of Transport and Department of Energy)
- Critical Minerals Production Tax Incentive (Treasury)
- Hydrogen Production Tax Incentive (Treasury)

We would also like to see merit criteria rewarding the use of Australian flagged ships and crew incorporated into decision making under the National Reconstruction Fund, the Powering the Regions Fund, the Northern Australia Infrastructure Facility, and the Net Zero Economy Authority.

Strategic Fleet Taskforce recommendations

How can the Act ensure that Strategic Fleet vessels operate competitively to help grow the Australian maritime industry?

Beyond the recommendations from the Strategic Fleet Taskforce, what else is required to ensure the Australian shipping industry can continue to grow?

The MUA would like to respond to these two questions together. To ensure the success of the strategic fleet and Australian registered and crewed shipping more broadly, it is

imperative that complementary reforms in other areas be implemented (some even prior to CTA reforms). The MUA proposes the following changes to current government policy/regulation with the aim of creating a more even playing field:

Shipping tax incentives

The Australian Government reform shipping taxation incentives is a critical support measure to stimulate investment in new Australian ships and bareboat ship charters that will be necessary to implement the Strategic Fleet and successful reforms to the CTA. This includes:

- Resolution of the design flaw in the current income tax exemption provision that applies to eligible shipping operators, whereby under the current design, the benefits to shipowners may effectively be clawed back when exempt profits of shipping operators are distributed to investors. To address this flaw, the shipping income tax exemption provisions in various tax laws (the Income Tax Assessment Act 1997 and the Income Tax Assessment Act 1936 (as amended by the Tax Laws Amendment (Shipping Reform) Act 2012) require amendment to:
    - Introduce deemed franking credits in respect of dividends to resident shareholders; and
    - Introduce a dividend withholding tax exemption in respect of dividends to non-resident shareholders.
- Refining the definition of core shipping activities in the Shipping Reform (Tax Incentives) Act 2012 to include:
    - Ships that are used wholly or mainly in, or in any operations or activities associated with or incidental to, exploring or exploiting the mineral and other non-living resources of the seabed and its subsoil, aimed at providing incentives for offshore oil and gas vessel owners/operators to register their vessel/s in Australia; and
    - Ships that are used in the construction and servicing/maintenance of offshore wind turbines aimed at ensuring these ships are Australian registered.
- Amending the Income Tax Assessment Act 1997 at s61-705 (Who is entitled to the seafarer tax offset), so the offset is available to all seafarers, regardless of occupational classification, and to seafarers engaged on a wider range of shipping activities and ships than currently applies (including for Australian seafarers engaged on foreign registered ships).
- Amending the Income Tax Assessment Act 1997 to allow Australian resident seafarers employed by foreign corporations in foreign shipping activities, to manage their own tax affairs, so that rather than the shipowner, operator or employer needing to claim a tax rebate from Government, each individual seafarer should be able to seek an exemption themselves when lodging a tax

return if they are an Australian taxpayer. This would provide a complimentary seafarer income tax structure for those not employed by Australian companies or on Australian registered ships aimed at encouraging foreign ship owners and operators to employ Australian seafarers.

- Amending the GST and Customs duty requirements so that Australian ships are not disadvantaged relative to foreign registered ships when operating in coastal trade.
- Legislate a ships capital grant scheme similar to that which was in place from 1987 to 1996 under the Ships (Capital Grants) Act 1987.
- Introduce a bunker fuel rebate (at around 25 per cent) for Australian ships on both laden and ballast legs of a voyage aimed at reducing freight costs and lessening the disparity between Australian and foreign ships.

Maritime Crew Visas (MCV)

Reform is needed to MCV as it is no longer fit for purpose. The purpose of the visa was as a temporary visa for non-national seafarers on international ships calling temporarily at Australian ports for cargo loading and discharge as part of a continuing international voyage. It is:

- now approved for use by non-national seafarers undertaking voyages under a TL which by definition is a ship that has ceased an international voyage and is operating in domestic coastal trading and is competing in a domestic industry.
- the only temporary visa with a long duration (valid for up to 3 years) that applies to domestic non-national workers that does not include any of the labour market tests and work rights/protections applicable to other work visas.
- open to abuse by shipowners/operators and ship charterers operating ships in intrastate coastal trade that do not opt into the CT Act (under s12) and are therefore not permitted to access the Customs exemption provision provided by s112 of the CT Act, which should mean that non-national seafarers on such vessels, which are presumably declared to be imported and entered for home consumption under the Customs Act 1901 (Customs Act), have 5 days to
    - transfer to another ship; or
    - leave the country; or otherwise become an illegal non-citizen; and
- it does not require the same standards of background checking as is applied to Australian workers, including seafarers, required to hold a Maritime Security Identification Card (MSIC) under the Maritime Transport and Offshore Facilities Security Act 2003 for work in or entry to a maritime security zone. Omitting shipping and sea freight corridors as critical infrastructure is dangerous.

All these factors interact to undermine employment opportunities for Australian seafarers in Australian domestic shipping and national security. Furthermore, the MCV and its administration no longer meets international best practice, exemplified by the

Canadian system given effect by the Canadian Special Measures Policy for the Maritime Sector (SMPMS).

Under this policy the Canadian *Coasting Trade Act 1992* and Canada's Labour Market Impact Assessment (LMIA) requirements, which accompany its temporary visa system, work conjunctively to require applicants for a temporary licence to operate in Canadian coastal trade to undertake a labour market assessment to assess the availability of suitably qualified Canadian seafarers before a non-national seafarer is issued with a temporary work visa for employment on a foreign ship in Canadian coastal trade. Furthermore, the Canadian SMPMS obligates the Canadian visa issuing agency to obtain a Letter of Concurrence from the Canadian seafarers labour union attesting to the availability or otherwise of suitable national seafarers to undertake the work on the ship applying for a license, which is incorporated in the Labour Market Impact Assessment.

The MUA recommends:

- Amendment to the Migration Regulations 1994 to:
    - Clarify that the MCV is applicable as a visa for
        - international seafarers visiting Australian ports for loading/unloading cargo and or passengers as part of a continuing international voyage (multiple entries for up to 3 years) and cannot be used for foreign seafarers regularly engaged in coastal trading; and
        - foreign seafarers on foreign registered ships allowing those non-national seafarers to be in Australia and employed on a ship for up to 60 days for the following specified purposes:
            - Ships undertaking repairs, maintenance or dry docking in Australia.
            - Mother ships at anchorage in a roadstead in coastal waters awaiting barge loading.
            - Ships involved in production and processing e.g. marine products.
            - Ships held at an anchorage point or wharf for biosecurity reasons.
            - Ships detained by the Australian Maritime Safety Authority.

      In all other circumstances, including any participation in coastal trading, foreign seafarers will require a Temporary Skill Shortage (TSS) visa which will only be available for sponsoring by an employer sponsor if there is a genuine seafarer skills shortage and the seafarer occupation is on a government list of skills shortage.

- Make consequential amendments to the Customs Act 1901 (Customs Act) and the CTA
    - The purpose of the consequential amendment to the Customs Act is to ensure that the maximum 60-day duration of the MCV for specified special circumstances works in harmony with the ship importation and entry for home consumption elements of the Customs Act. This will require the following amendment to the Customs Act:
        - That s49A(1)(b) of the Customs Act (Ships and aircraft deemed to be imported) be amended by reducing the time period from the current 30 days that a ship can be deemed not to be imported, to 5 days, but accompany that amendment with a new S49A(1)(b)(i) specifying that an extension be permitted, on application, beyond 5 days (consistent with the general requirements in clause 988.512 of the Migration Regulations 1994), for up to 60 days requiring consequential amendment of clause 988.512 of the Migration Regulations 1994) for a specified purpose, being one of the five purposes mentioned in Para 5 above.
    - Similarly, to ensure that these arrangements harmonise with the Coastal Trading Act, it requires an amendment to:
        - Repeal s112 in the CTA to eliminate gaming of the Customs Act to circumvent migration laws. This would mean that foreign ships with foreign crew engaged in intrastate trade, whether or not they have been approved to opt in to the CT Act (under s12), and ships engaged in interstate trading voyages authorised by a Temporary Licence (TL) will require their foreign seafarers to hold a Temporary Skill Shortage (TSS) visa that includes a labour market testing requirement, supplemented with a “Letter of Concurrence” procedure that verifies or otherwise the availability of national seafarers as provided under the Canadian Special Measures Policy for the Maritime Sector, but only in circumstances where seafaring occupations are on the Government’s occupational skills shortage list.

Reform maritime safety law

To restore an appropriate balance between ships that are covered by the Navigation Act 2012 (Navigation Act) and ships covered by the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (National Law Act).

The purpose of this reform is to ensure that the default marine safety law applying to commercial ships operating anywhere within the EEZ in Australia is the Navigation Act, while acknowledging there are many smaller ships operating in safer ocean or

sheltered/inland water conditions, some commercial but largely recreational, that are appropriately covered by the lower standards applying in the National Law Act.

A key consequence of the reform proposed is that the default seafarer vocational education and training (VET) qualifications and occupational licenses on commercial ships, are derived from international standards of IMO Conventions. Commercial ocean going ships should not be permitted to default out of those internationally recognised standards.

Improve national human biosecurity arrangements for the maritime sector

- The COVID-19 pandemic and various Parliamentary and other Inquiries examining the impacts of the pandemic have highlighted gaps in human biosecurity law, procedure and practice which requires attention.
- There are a range of changes required to the way human biosecurity determinations and orders are made under Commonwealth and state/NT laws to ensure they are better integrated with laws/Regulations impacting on seafarers and port workers.
- In addition, changes to the procedures for practice (the biosecurity decision to allow a ship to load/unload cargo and or passengers) are required so they are better integrated with harbourmaster functions managed by state/NT port authorities.

Improve Seafarer Rights

Seafarer rights require review to ensure all seafarers can enjoy their rights derived from the ILO Maritime Labour Convention. This requires:

- Adoption of a consistent, nation-wide policy on the movement of essential maritime workers between national and state/Territory borders as part of any policy development action to prepare for future disruptive events like a global pandemic. The policy should be accompanied by protocols for dealing with the many circumstances that arise, based on the IMO protocols *(Coronavirus [COVID-19]–Recommended framework of protocols for ensuring safe ship crew changes and travel during the coronavirus pandemic)*.
- A review of maritime security plans to ensure there are standardised and effective procedures for welfare and labour organisations to access ships in ports. To achieve that the Australian Government should require:
    - that the Department of Home Affairs be instructed to review all maritime security plans as required under the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) to ensure there are standardised and effective procedures for visitors to ships, including welfare and labour organisations, to access those ships through port operator's

terminals, and that such procedures be developed in consultation with seafarer welfare, labour and employer organisations; and
    - that resultant procedures be made available on request by seafarer welfare, labour and employer organisations.
- A strengthening of the *Modern Slavery Act 2018* by clarifying the definition of forced labour, by defining forced labour in international shipping as including non-compliance with specified provisions in the ILO Maritime Labour Convention, particularly the repatriation requirements on completion of the specified duration of a seafarers employment agreement (SEA).

Reform the Australian Jobs Act 2013

Reform the Jobs Act to ensure that a fair share of the transportation services for the carriage of minerals, resources and energy products to export markets are delivered in ships operated by Australian entities that employ Australian seafarers.

Review national and state/NT procurement policy

Australian ship procurement policy provides no support for Australian merchant shipbuilding nor favours use of Australian ships in the transportation elements of government procurement and transportation of goods.

The MUA recommends that the Transport and Infrastructure Ministerial Council coordinate a review of Commonwealth and state/NT procurement policy to ensure that:

- Ships and sea freight are appropriately considered in government procurement of goods such as for transportation of defence equipment and materials, infrastructure and other construction projects and general supplies for government; and
- A proportion of replacement public and private passenger ferries are built in Australian shipyards, with specified levels of Australian materials and labour content.

Ports and freight supply chains strategy

- There should be policy coordination for port development in Australia, and that the strategy helps guide State and NT initiatives that can facilitate the revitalisation and growth of Australian coastal shipping through better port planning, better port infrastructure and a more tailored fees and charges regime that supports Australian shipping.

Net zero and renewable opportunities

The MUA welcomes the Maritime Emissions Reduction National Action Plan (MERNAP) and the development of offshore wind as an important electricity generation source. Opportunities include:

- Modal shift of freight on to ships, which can reduce freight emissions 60-80%.[8]
- Developing and testing zero-emissions cargo ships in a future Australian Strategic Fleet, including the use of hydrogen or ammonia as a fuel.
- The development of offshore wind generation will require substantial use of ships to construct turbines, lay cables, and maintain turbines. With the right policy settings this is an opportunity to revitalise the Australian maritime industry.
- The Clean Energy Council has suggested that it would be beneficial to have an Australian Wind Turbine Installation Vessel (WITV) as part of the Strategic Fleet. Such a vessel has a huge clear deck space and crane, which could also be used in the event of emergencies, for port and harbour reconstruction, and for offshore oil and gas decommissioning. The uncertainty built into Australia's two-step OEI Act application process and the long lead time to contract such a vessel means that it may otherwise be difficult to secure such a vessel in a timely fashion.[9]
- Require ports to provide ships with a shore-based power supply from renewable energy, and ships to shut down their engines when alongside and to plug into that portside power supply (cold-ironing).
- That the Australian Government ensure that Australia be an early adopter of other ship pollution prevention standards, technology and practice ahead of the International Maritime Organisation (IMO) timetables, such as use of lower sulphur fuels, optimised engines, exhaust after-treatment, selective catalytic reduction (SCR), optimised steaming rates, and improved auxiliary engines.
- Authorise AMSA to seek expedited global adoption of improved ship pollution prevention technologies and practices in its role as Australia's representative in the International Maritime Organisation (IMO).

Integrate shipping policy with national industrial policy

There are also opportunities for the Australian Government to revitalise Australian shipping through a commitment to integrate shipping policy into wider industrial policy and strategy, acknowledging that shipping is a vital service supporting other wealth generating industries. Ships are critical to the supply chains for all facets of manufacturing, resources and energy including fuel (ships service every facet of the offshore oil and gas industry), agriculture, aquaculture, fishing, tourism (including the growing marine tourism and cruise sectors), wholesale and retail distribution, and construction, noting that key manufacturing industries such as steel (requiring iron ore and coal), aluminium (requiring bauxite and alumina), petroleum (requiring crude oils

[8] Robin Smit and Paul Graeme Boulter, Impacts of mode shift on well-to-wheel emissions from inter-capital transport in Australia – Part II: Sea and air transport, *Explora: Environment and Resource*, 2024: 1(1):3471, p.17.
[9] See the Clean Energy Council submission to this consultation.

and condensates), chemical and explosives production (requiring ammonium nitrate, acids etc), building products (requiring gypsum, mineral sands etc); food processing (requiring sugar, salt, food concentrates), as well as agricultural production (requiring fertiliser, fuels, grain seeds), offshore extractive industries such as oil and gas are reliant on ships for supply of key bulk commodity inputs and distribution of outputs for their efficient operation.

Likewise, the emerging offshore wind energy industry requires ships for construction and operations. Accordingly, the MUA recommends the Government can implement:

- An industry policy for shipping (just as in rail or road transport) by necessity that needs to be integrated with industrial policy for other sectors such as manufacturing with FMiA, mining and mining equipment, energy, agriculture (fertiliser, grains, machinery, livestock), aquaculture, fishing, and tourism and emerging renewable industries such as hydrogen, ammonia and biofuels.
- Bulk commodity ships and other large trading ships used in these supply chains create demand for a range of other marine services including towage, pilotage, bunkering, waste removal, provisioning, firefighting, salvage and marine rescue as well as requiring port services and stevedoring services.
- Commercial ships are central to Defence requirements including humanitarian missions, to support border protection, to support national emergency response such as during bushfires and floods and for supplying remote coastal regions and communities.

Each of these segments of the shipping industry requires appropriate policy, regulatory, administrative and funding support if they are to flourish and create an efficient and functional shipping industry that attracts investment and is integrated with client industries.

Recommendation 7: The Review make recommendations on a package of reforms that will support the successful operation of the CTA, the Strategic Fleet and ensure that GL vessels are not being undermined by shipping related policies and regulation across all Government portfolios and agencies.

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?

The MUA recommends inserting a definition of Strategic Fleet into the Act. As long as a strategic fleet vessel is defined and they are required to hold a General Licence it is not necessary to grant them other privileges (subject to our recommended reforms). Once

the pilot review completed the MUA supports requisitioning arrangements to be enshrined in legislation. Our suggested amendment is below:

Requisition of a Strategic Fleet vessel

Declaration of national need

(1) The Minister shall have discretion to make a declaration as to a national need.

(2) When such a declaration is in place the Minister can require the owner of any strategic fleet vessel to furnish the vessel and its crew to the Minister for the declared national need and the charterer of the vessel shall be recompensed in the manner prescribed in the regulations.

As recommended by the Taskforce, the MUA supports a Strategic Fleet levy that is modelled on AMSA levies to ensure the sustainability of the fleet.

Recommendation 8: A definition of strategic fleet and requisitioning arrangements be inserted into the CTA once the pilot review is complete. A strategic fleet levy should be introduced to support the long-term sustainability and viability of the fleet.

Addressing workforce supply challenges

How can the Act support a training and workforce environment that encourages and grows Australia's maritime workforce and sovereign maritime skills?

The decline of the maritime skills base is closely linked to the decline of Australian ships, given that Australian ships are required for seafarers in training to gain mandatory seatime, essential to attain internationally recognised STCW-aligned maritime qualifications and licences.

If no reforms are made to the CTA, our maritime skills base will reach unsustainable levels. Maritime skills are necessary for a maritime dependent island nation with a strong demand for maritime skills in shipping related services like towage, pilotage, mooring, bunkering and harbourmaster; and in onshore roles in ship regulation, safety, training, freight forwarding, marine insurance, marine chartering, ship financing etc; along with the capacity to support Navy alternative crewing models, essential for merchant navy support for the Defence Forces;

Simply reforming the CTA in a way that utilises Australian shipping for costal trading will significantly improve training opportunities and promote growth of the maritime workforce.

The MUA supports the training recommendations of the Taskforce, particularly the need to introduce a training levy to share the cost of training amongst shipping companies and end users. Australian registered vessels are generally required to provide training berths and pay for trainees. This can only be achieved where ships are commercially viable. Our reforms to the CTA will ensure there are medium to long-term contracts of affreightment so it is more sustainable to provide training and employ trainees.

The MUA acknowledges the work underway at ISA to implement a range of initiatives to attract and retain seafarers and document the skill needs of the industry. We welcome the government's funding boost to training but note as there are relatively small numbers of seafarers and trainees the training needs of this group is often overlooked and deprioritised by State and Federal governments. The funding commitment required for seafarers is relatively small to reverse the decline of maritime skills and address the cost barriers. Group training organisations such as METL also offer innovative solutions to trainees and provide additional support to improve retention rates.

More recently, a joint industry collaboration (AREEA, MIAL and all the maritime unions) produced the INPEX Maritime Workforce Skills Position Paper. This report made recommendations to improve, attract and retain seafarers. Immediate asks include government funding to reduce or subsidise RTO course fees and support trainees with their living expenses.

The MUA urge the government to commit to funding both private and government vessels and RTOs in the upcoming MYEFO budget so there is a pipeline of trainees available when shipping reforms and the Strategic fleet is ready.

Role of Navigation Act and National Law Act coverage in workforce shortages

The passage of the *Maritime Safety (Domestic Commercial Vessel) National Law Act 2012* significantly reduced the coverage of the Navigation Act, and therefore the size of the seagoing workforce required to hold STCW-compliant qualifications. It also created a new national system of seafarer qualifications (Near Coastal qualifications) that are entirely incompatible with the qualifications that seafarers hold under the Navigation Act. These changes have had the effect of reducing the number of seafarers with STCW-aligned qualifications, and making it harder for individual seafarers with Near Coastal qualifications to move to the international qualifications system.

There are also important safety benefits to moving a relatively small number of larger vessels in high-risk industries from the Domestic Commercial Vessel to the Navigation Act system. The Australian Maritime Safety Authority also supported this change.[10]

[10] See AMSA, Submission to the Independent Review of Domestic Commercial Vessel Safety Legislation, March 2022.

We encourage the Review to make recommendations to address this issue. It has been raised in the draft report of the Independent Review of Domestic Commercial Vessel Safety Legislation, which recommended:

> "requiring higher risk vessels to comply with the Navigation Act and associated international standards, including the International Dangerous Goods Code and the Standard of Training, Certification and Watchkeeping." [11]

Unfortunately, pressure from small vessel operators seeking to cut costs of training seafarers and safety compliance meant that although the final Report of that review acknowledges that current DCV regulation is insufficient for some types of vessels, it pulled back from the draft recommendation to say that 'high risk' DCVs should comply with additional specific Marine Orders and not the full Navigation Act due to arguments from "industry stakeholders" that Navigation Act compliance had "implications in terms of survey obligations, risk mitigation strategies and crewing".[12] This is an inadequate compromise - the Navigation Act is a holistic package that deals with all aspects of vessel safety for high risk vessels. Crewing, qualifications and survey standards must be higher on these higher risk vessels.

The government has not yet responded to draft report. The Terms of Reference for that Review did not consider the workforce implications or the implications for Australia's maritime trade and skills of not moving a small number of larger and high risk DCVs to the Navigation Act jurisdiction.

Recommendation 9: Commercial vessels should by default fall under the Navigation Act and the IMO Convention safety standards it implements.

Recommendation 10: Restore coverage of the National Law to be closer to the types of vessels originally covered by the National Standards for Commercial Vessels (NSCV) that underpin the National Law. All commercial vessels must be regulated by the *Navigation Act 2012*, except those which:

- Voyage only within 12nm of the coast and a safe haven.
- Are 24m or under in length.
- Carry less than 50 passengers.
- Are fishing vessels under 35m in length.
- Do not carry dangerous or polluting cargoes, including oil, gas, ammonia and hydrogen.
- Do not proceed on voyages of more than 36 hours in length.
- Do not carry out 'high risk' operations.

Recommendation 11: That a full and transparent review of the seafarer qualification framework and associated VET certificates and units of competency be carried out.

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[11] Draft report of the Independent Review of Domestic Commercial Vessel Safety Legislation, p.8, p.27-9.
[12] Independent Review of Domestic Commercial Vessel Safety Legislation and Costs and Charging Safety Report—Phase 1, September 2023, p.30.

Domestic and international seafarer qualifications must be streamlined in order to have STCW standards of competence integrated at all levels to allow seafarers to develop their career and training in a straightforward process. Incorporating the higher standards of STCW, at an appropriate level, into the units of competency of the VET certificates will increase the overall standards of Australian seafarers, reduce the complexity of the system and reduce overall training costs. It is also recommended that all personnel working on any type of vessel must have STCW-compliant survival and fire prevention training.

How can the Act enable or support access for seafarers from other countries that Australia partners with to work on Australian vessels?

The Strategic Fleet Taskforce recommended that the Australian 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.

The MUA recognises the future shortage of seafarers and the need for arrangements to be made to support the growth of Australian shipping when the reforms are introduced. In principle, the MUA is supportive of transition arrangements subject to the following conditions:

- That it is made clear to government and industry that these are transitional arrangements as training initiatives are being introduced.
- There is a requirement for ship owners to make a training and transition plan for their vessel to become fully Australian crewed.
- That they be time-bound – that is any arrangements entered into will only be for an agreed set period.
- Same job same pay obligations apply to foreign seafarers working on Australian vessels, including the right to collectively bargain.

Recommendation 12: The CTA can support access to foreign seafarers through our immigration system on the following conditions:

- It is a transitional arrangement to assist with Australian national seafarer shortages on AGSR and GL vessels
- A training and transition plan for the vessel to become fully Australian crewed will need tripartite agreement
- Same job, same pay obligations will apply for foreign seafarers working on Australian vessels, including the right to collectively bargain.

Should Temporary Licence holders be required to provide training berths for a specific number of Australian nationals? Please explain why.

No, the MUA believes that if amendments are made to the CTA and related support for training there would be enough Australian registered vessels to support trainees. It would also be difficult for unions to protect and enforce trainee rights without access to the full suite of rights available to unions under the FWA and an EBA.

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? Please explain why.

The are significant differences between Schedule A, the Seagoing Industry Award and an enterprise agreement. Nearly all Australian seafarers engaged in coastal trading are covered by an enterprise agreement that are higher and contain better conditions than the Award. While Schedule A represents an improvement to wages and conditions that foreign seafarers will otherwise have in their SEA and/or ITF Agreements, the cost differential remains high enough to act as an incentive to use foreign vessels and crew rather than offering incentives to use Australian crew.

With effect from 1 January 2010 regulations 1.15B -1.15F in the Fair Work Regulations 2009 extended the coverage of the FW Act to permit vessels (later further amended to reference TLs). It was at this time that the requirement that permit ships needed to have undertaken two or more voyages before the FW Act covered them was inserted. This arose out of the Rebuilding Australia's Coastal Shipping Industry report of the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government.

In Chapter 3 (paragraph 3.106) the committee indicated that a gradual phasing out of regulation 1.1 should occur because *the Committee is hopeful that a reformed coastal shipping regulatory framework will result in a gradual increase in Australian ships operating on the coast and a decrease in the use of permit vessels. If such a decrease were to occur, then it would be beneficial to gradually phase out Regulation 1.1 and allow for the extension of the Maritime Industry Seagoing Award to seafarers on permit vessels.*

As the opposite has occurred, this flaw in the regulatory system applying Australian labour standards to non-national seafarers on TL ships requires reform. TL ships and the non-national seafarers on those ships now regularly remain in Australia for long durations, there is no basis for the current Schedule A wages and conditions to continue to apply (which should be required to transfer registration under the Shipping

Registration Act and be placed on the General Register), and that Schedule A should no longer apply these vessels. There is also no basis for the Award-Free voyages to remain.

Removing the Award-free voyages and including the ballast leg (discussed earlier in our submission) for TL holders will move the dial further towards a level playing field. The MUA believes that true competitive neutrality comes when all those operating in the domestic freight market are expected to pay Australian wages and conditions.

To this end, while acknowledging this may require a transitional period or a phased implementation plan, the MUA recommends the following changes be made to the FW Act in Part 2-6 insert a new division - 5 containing the following:

DIVISION 5 - CURRENT RATES RULING REVIEW

299A Current rates ruling review to be conducted

(1) The FWC must conduct and complete an annual current rates ruling review in each financial year.

(2) In the annual current rates ruling review the FWC

(a) must review:

(i) The nature of each type trade of cargo and passengers undertaken under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*

Note: Types of trade are determined by reference to the nature of the cargo carried. Examples include the bauxite trade, the cement trade and the iron ore trade.

(ii) The enterprise agreements (if any) that apply to each of the trades referred to in paragraph (a).

(iii) The modern awards (or parts of modern awards) that apply to each of the trades referred to in paragraph (a)

(b) Must make a current rates ruling for each trade referred to in paragraph (a)

(3) A current rates ruling that is made in a current rates ruling review comes into operation on 1 July the next financial year.

299B Everyone to have a reasonable opportunity to make and comment on submissions

(1) The FWC must, in relation to each current rates ruling review, ensure that all persons and bodies have a reasonable opportunity to make written submissions to the FWC for consideration in the review.

(2) The FWC must publish all submissions made to the FWC for consideration in the review.

299C Content of current rates ruling

(1) In a current rates ruling the FWC is to specify which enterprise agreement or modern award (or part of a modern award) provides the rates of pay and

conditions of employment for seafarers employed in each trade of cargo and passengers undertaken under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

Under the CTA the current rates ruling will replace Modern Award payment references. These changes will contribute to a level playing field and make it simpler to regulate labour conditions for foreign seafarers. This will also contribute to resolving the design flow in the current CTA that practically does not give preference for the use of a GL vessel. This ensure that preference for a GL vessel and Australian crew is incentivised.

Finally, the MUA supports the ITF's submission and believe the Reviewers will benefit from their insights on the impact and enforcement challenges of the Fair Work regulation and application of the Award.

For 2024 YTD, Australian ITF Inspectors have recovered USD$18,304,292 wage and entitlement theft. An estimated 40% of these wages and entitlements have been in coastal trading. There's a further USD$2 million in claims that are subject to a potential test case as employers are disputing the definition of a voyage (despite Departmental advice on the definition of a voyage). ITF inspectors have identified a further $40 million in potential wage theft that inspectors are in the process of taking action to recover.

In addition, they have managed hundreds of cases for foreign seafarers handling matters such as substandard living conditions, labour exploitation, health and safety and abandonment.

These wages figures are only for those vessels that the ITF has been able to inspect and after the Award Free voyages are completed. Many have decided to not pay Schedule A wages at all given the risk of being caught is relatively low. Others have paid but significantly underpaid – sometimes deliberately. Simply put, the current system is failing foreign seafarers and Australian seafarers and reform is needed.

Recommendation 13: For immediate action to be taken by the Minister for Workplace and Employment Relations to remove the requirement for TL holders to pay Schedule A wages only after the two Award-free voyages as there is no basis for it to remain. The Review should recommend including the ballast leg of the voyage in the CTA for the purposes of paying Schedule A. The Review should also consider how the current rates ruling could be implemented in the future.

Appendix A: MUA recommended amendments to the Coastal Trading (Revitalising Australian Shipping) Act 2012.

Attached separately to this submission. Note: the MUA is providing this to the Reviewers and the Department on a confidential basis – not to be published.