MARITIME INDUSTRY AUSTRALIA LIMITED

Senate Rural and Regional Affairs and Transport Legislation Committee

Shipping Legislation Amendment Bill 2015

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1 Executive Summary

The *Shipping Legislation Amendment Bill* (Bill) will lead to the complete demise of the Australian flagged trading ship fleet - the Regulatory Impact Statement (RIS) confirms this is the intended outcome. Such an extreme result causes concern for many reasons including:

- The impact on the directly affected businesses and their employees
- The impact on the broader maritime industry
- The impact on the nation as the benefits a maritime industry brings are lost
- The potential for loss of service reliability and price fluctuations

MIAL supports legislative change that encourages Australian maritime businesses, to the benefit of the nation by driving a strong maritime cluster. This legislation however is explicitly directed at benefiting foreign maritime businesses by delivering them 100% market share.

Investment in maritime assets is a long term strategy. The interests of the Australian businesses that have already invested (in the hundreds of millions of dollars), those that are about to invest and those that are going to invest in the future have been completely overlooked by this legislation and the analysis that supports it. These Australian businesses provide economic contribution to the nation as well as jobs to Australian residents, many of whom have families and live in regional Australia.

Legislation that fosters investment rather that erecting barriers that impede it would have much more positive outcomes for the nation, as described in this submission. The Bill does not consider any measures to capitalise on the natural advantages that Australia has to become a great maritime nation and to derive all the benefits that arise as a result.

In addition, without broad support – preferably bi-partisan support – the new requirements will provide industry with no certainty and therefore businesses (both users of shipping and shipping companies) will continue to cancel or postpone investment decisions leading to a continued state of inertia. A more moderate proposal to improve the system rather than abolish it would be more likely to gain widespread support and therefore provide industry with the certainty needed to get on with business.

The changes to the Australian International Shipping Register (AISR) are supported and would be improved further if the AISR was expanded to include all international 'activities' not just 'trading'.

The inclusion of voyages of liquid fuel products from offshore facilities within the regime is supported as a sensible and straight forward solution to the issue.

The intent of the other changes aimed to overcome the issues with Customs importing vessels is supported however fixing the issue at the source (*Customs Act 1901* (Customs Act)) is a preferred solution.

It is vitally important to unpack the issues associated with coastal trading and address solutions at the source. The majority of the most serious issue / impediments to coastal shipping are actually issues associated with the *Fair Work Act 2019* (Fair Work Act) application and Customs treatment of vessels, not the *Coastal Trading Act (Revitalising Australian Shipping) 2012* (Coastal Trading Act) *per se*. MIAL propose that what is needed in terms of legislative change is:

- amend the Coastal Trading Act to allow it to function more efficiently and effectively including a move away from a "one size fits all solution" for all trade types;
- remove the application of the Fair Work Act to foreign ships with foreign crews;
- refine the structures that are already in place in support of Australian businesses to capitalise on the opportunity to grow Australia's maritime capability;
- remove the impediments imposed by Customs on the sector.

MIAL represents a diverse range of members with varying views on coastal trading. Not all members fully support all the views expressed in this submission.

2 Introduction

This submission is made on behalf of Maritime Industry Australia Ltd (MIAL), previously known as the Australian Shipowners Association. MIAL represents Australian companies which own or operate:

- international and domestic trading ships;
- Floating Production Storage and Offloading units;
- cruise ships;
- offshore oil and gas support vessels;
- domestic towage and salvage tugs;
- scientific research vessels; and
- dredges

MIAL also represents employers of Australian and international maritime labour and operators of vessels under Australian and foreign flags.

The trading fleet Members of MIAL include companies whose primary business is to provide sea transport services to the freight market as well as companies whose shipping operations form an element of their supply chain, hence some of MIAL's Members are very large cargo interests.

MIAL Members participating in domestic trade utilise the existing regime of General Licenses, Temporary Licenses and Transitional General Licenses. MIAL Members are active in dedicated international trades under both Australian and foreign flags.

MIAL provides an important focal point for the companies who choose to base their shipping and seafaring employment operations in Australia.

MIAL represent the collective interests of maritime businesses, primarily those operating vessels or facilities from Australia.

MIAL is uniquely positioned to provide dedicated maritime expertise and advice, and is driven to promote a sustainable, vibrant and competitive Australian Maritime Industry and to expand the Australian maritime cluster.

MIAL's members represent a very broad cross-section of the maritime industry, including shipowners, shippers and charterers. As a result, on some matters of coastal trading MIAL members have very different views. On these matters, this MIAL submission reflects the view of the 'Australian shipowner', as distinct from the 'shipper' or 'cargo interest' view.

3 Sound Economic Reasons to Build a Stronger Australian Maritime Industry

It should be expected that Australia would have a strong and broad maritime/ shipping industry given that it has:

- The fifth largest shipping task in the world comprised of:
  - significant raw commodities for export
  - largest net exporter of LNG by 2018
  - reliant on significant imports by sea
  - A long coast line with geographically diverse populations and industries
- Major offshore oil and gas industries
- The world's fastest growing cruise industry
- Responsibility for part of the Antarctic region
- Considerable defence and border protection activity on-water and ashore (building, maintenance and repair)
- Highly active ports requiring a range of on- water services
- World leading, high value, niche technology investments

These natural advantages, however, have not translated into a strong Australian controlled maritime industry or a particularly strong economic contribution from the local Australian industry. This contrasts with the international position where a large number of developed and developing countries have recognised the importance of a strong shipping industry, even without most or all of the natural advantages Australia has, and the economic benefits that this can bring. These countries have actively encouraged the growth of a shipping industry through attractive fiscal policies which embed favourably into the particular country's wider tax system.

Australia could benefit the same way these other nations have and there are sound economic reasons to foster a local maritime industry. Recent economic analysis on the contribution of the industry[1] identifies that improving the regulatory and fiscal settings for Australian based operations provides the following benefits:

- Increase GDP contribution by 50% up to more than $13 Bn dollars.
- Increase jobs by 30% up to over 40,000
- Almost double tax revenue to a total of $1.77Bn

Most importantly, these economic benefits can be achieved at no net cost to the Australian economy.

Australia should focus on the big picture maritime capability that a country like Australia should and could have. Embracing the breadth of our maritime activity is the key to success in terms of the nation benefiting both financially, strategically and socially from a vibrant maritime sector.

Building a viable business environment and competitive investment structure for all maritime activity is the starting point.

Unfortunately the proposed Bill does not give effect to such a vision and in fact would decimate the local shipping industry.

In addition, without broad support – preferably bi-partisan support – the Bill provides industry with no certainty and therefore businesses (both users of shipping and shipping companies) will continue to cancel or postpone investment decisions leading to a continued state of inertia.

4 Consequences of the current Bill

The impact of the Bill will lead to the complete demise of the Australian flagged trading ship fleet. The Regulatory Impact Statement (RIS) outlines this outcome, noting that only two Australian flagged ships are likely to remain – the Tasmanian Government owned Spirit of Tasmania I & II. There is no explanation given in the RIS as to why these ships would remain Australian flagged and indeed that assumption would need to be questioned.

The complete demise of the Australian flagged trading fleet has a range of consequences.

4.1 Business closures

The Australian businesses that operate / own Australian ships will inevitably close as a consequence of this change. It is not possible for a business operating from an Australian cost base to compete with foreign ships.

Closure of such businesses will result in widespread redundancies for workers in both roles ashore and at sea. Many of the sea staff are likely to find themselves unemployed thereafter as their industry has been shut down as a result of the regulatory change.

[1] The Economic Contribution of the Australian Maritime Industry. PricewaterhouseCoopers. February 2015

Shore based workers would need to seek work in other sectors in a worsening job climate.

These are only the direct losses – there would undoubtedly be businesses indirectly affected that would suffer as a result of the removal of Australian ships from the local market and further jobs that would be lost as the requirement to service local ships disappears.

4.2 Vessel substitution

Some Australian businesses may be in a position to re-flag and re-crew their ships and continue to operate their business. The specific features of several Australian coastal routes servicing regional and rural areas are such that competition is unlikely to appear from other operators as the freight task in question would not warrant interest from (and the ports probably couldn't accommodate) the kinds of ships that would be 'passing by' and could offer competition in a deregulated market. Hence it is unlikely that additional competition will be introduced to drive freight rates down.

At the same time many Australian jobs will be lost as the seafarers are replaced and shore side roles are moved offshore to support international crewing and foreign flag /technical requirements.

4.3 Pressure on the broader maritime sector

Deck and Engineer Officers (officers) are required for a range of strategically important shore based roles that keep our island nations ports functioning and our oceans safe. These include harbour masters, pilots, marine surveyors, safety and environment inspectors, maritime regulators, trainers/lecturers, to name but a few.

The only way for officers to obtain the necessary experience to obtain their qualification is on board vessels of a certain size. The impact of the Bill will be that far fewer vessels will be available to provide that training as gaining appropriate training on foreign ships is more difficult. The measures contained in the Bill concerning seafarer employment do not provide a secure supply of trained staff.

4.3.1 Offshore oil and gas sector – vessel support sector

With the loss of all coastal trading ships, the burden for training future Masters and Engineers will fall to the larger vessels operating in support of the offshore oil and gas sector. This sector will be heavily impacted as the available pool of people to work at sea diminishes.

At the same time as they are dealing with issues of supply, these sectors will also become the only remaining source of trained officers. The loss of highly skilled officers to shore based roles will impact them more than is already the case. To demonstrate the already unsustainable pressure that exists, one company recently lost 13 Masters to the pilot service in 18 months. To train a Master takes a company ~8-10 years and is a considerable investment for a company to make.

The pressure this legislation and the demise of the coastal fleet will place on these businesses to recruit, train and importantly retain their seagoing staff will be considerable and potentially crippling.

The difficulty in retaining seagoing staff already negatively impacts these businesses as noted above and if the circumstances worsen they may be forced to consider employing more staff on 457 visas.

4.3.2 Offshore oil and gas – facilities / platforms /FPSOs etc

The range of assets deployed at sea require seagoing staff even though they are not traditionally considered as 'ships'. Importantly these facilities, while they need the skills, are unable to conduct all the training that is required to become a qualified seafarer as they typically do not move very often. This sector will be heavily impacted as the available pool of people to work at sea diminishes and they are unable to train their own staff completely.

The reduced number of seafarers available as a result of the loss of the coastal trading ship sector will result in issues of skilled worker supply which will invariably drive up costs.

As with the other impacted sectors, the pressure this will place on businesses to recruit and importantly retain seagoing staff will be considerable and potentially crippling. Again, the difficulty in retaining seagoing staff already negatively impacts these business which may be forced to consider employing more staff on 457 visas or via migration.

4.3.3 Shore based roles

If the seagoing sector resorts to crewing their ships with 457 visa staff, which cannot move easily between employers, the shore based users of skills obtained at sea (ports / pilots / regulators / educators) will have to look elsewhere for their staffing needs.

Without a strong, local industry to train such people across a range of vessel types Australia will necessarily become dependent on immigration in the future to secure such expertise. Relying on Australia's ability to attract an international workforce (that is likewise in demand by other nations) for such critical roles introduces considerable risk to Australia's maritime capability.

4.3.4 Near Coastal Vessels and Tugs

The impact on the broader fleet of vessels is that the pool of potential employees is greatly reduced and the attractiveness of a career at sea is lessened as the opportunity to progress into larger ships is greatly diminished. The flow on impact of the loss of career path for these people is difficult to determine absolutely however, if the career is seen as less attractive other measures might be required to attract and secure employees in this sector in the future.

The towage sector, in the main, uses people with a skill set in excess of what the tugs themselves are able to train as 'sea time' on board tugs does not count in full toward the highest levels of AMSA licenses. Amending this requirement could assist the towage sector become more self-sustaining.

Overall however, the loss of a pool of trained staff will have a negative impact on these business as recruitment will be more difficult and they will potentially have to rely on migration to fill roles or establish new, costly training regimes in order to 'grow their own' workforce.

4.3.5 Summary

The only method for producing a pool of highly trained professional officers is to ensure that they have access to the necessary platforms to receive the proper training. This requires structure and certainty and cannot be achieved with ad hoc, piecemeal measures.

The Bill requires senior positions to be filled by people with particular work rights. However highly trained people to fill these senior roles must first be junior officers and the Bill provides no avenue for that training pathway to exist. The measures contained in the Bill will not grow and foster a skilled workforce.

4.4 Total reliance on foreign operators – General Cargo

There are serious questions about whether or not the volume of cargo would entice foreign carriers to service some trades, such as Bass Strait General Cargo on anything like a regular basis.

The responses to questions in the Options paper released by the Department in 2014 from the largest international container ship operator in Australia provide sound and measured advice regarding the consequences of 'opening the coast':

> "***7. Would opening the coast supported by legislative changes reduce freight rates for Australian shippers?***
>
> *We don't accept that freight rates have increased significantly with the introduction of the Coastal Trading Act. Opening the coast will diminish reliable access to shipping services and*

price stability over the long term. Australian domestic shippers will be entirely exposed to international freight rate volatility and the space demand and priority given to export cargo.

8. Would there be any risk to the availability and supply of tonnage if there was no regulation of coastal trading?

If there was no regulation of coastal shipping there will be reduced access to reliable consistent shipping services and high price volatility. Australian domestic shippers will be entirely exposed to international freight rate volatility and the space demands and priority given to export cargo"

The views of this significant international container carrier cannot be ignored in this policy debate. They clearly show that there is no fundamental problem with the existing system and that much of the impact (loss of freight and higher costs) is not the case for the segment of the market they are involved in. Further, the warnings provided regarding the loss of reliability of service and volatility in costs must be considered. Australian cargo interests will not be well served by having freight left on the wharves or services so infrequent as to impede their businesses.

The reliability and cost for the range of services currently provided would be unlikely to be matched by occasional international carriers capable of moving the broad range of cargo carried by the existing ro-ro ships crossing Bass Strait.

This route has a high degree of competition already from three existing Australian businesses. The existing Australian operators provide an integrated logistics operation involving ro-ro shipping capability that includes not only containers but trailered cargo, vehicles and livestock. The trade from Tasmania represents ~25% of the Port of Melbourne annual container volumes.

Further, the Tasmanian Freight Equalisation Scheme has recently been extended to cover export cargo. This recognises the unique position of Bass Strait trade, yet the Bill treats Bass Strait trade no differently to all other coastal sectors.

If the Bill is adopted, it is inevitable that the client base for the existing operators would be eroded over time by foreign carriers (likely picking up on the containerised portion of the cargo) and these operations would eventually be put out of business. The redundancy costs alone would run into tens of millions of dollars.

Business operating in those circumstances, much like operating a business with the current uncertain legislative environment, becomes even more challenging as Australia loses credibility internationally as a sound and safe investment option. This affects the ability to secure finance and results in lower levels of investment in the industry. Clearly these are very negative impacts to the businesses involved but also to the industry generally and the national economy given the direct and indirect benefits that Australian maritime businesses bring.

5 Detailed Response to the Bill & Explanatory Memorandum

The commentary surrounding the need for change oversimplifies some very complex issues and could be misleading. A genuine assessment of the circumstances that impact Australian coastal shipping is required in order that solutions are found that will achieve the desired outcomes. Now, more than ever before, it would appear that it is time to move away from a “one size fits all solution” and tackle the issues specific to each trade type separately and, where necessary, distinctly.

5.1 Overview of the current situation

The major Australian coastal trading fleet has declined over recent years (and was in decline before the Coastal Trading Act was in place) as a result of the changing Australian economy and the shift

away from manufacturing and refining in this country. The departure of Australian ships is linked to closures or changed nature of operations of shore based operations such as Alcoa's Point Henry plant, Bluescope's Westernport operations, Caltex's Kurnell refinery, and so on.

It is overly simplistic and misleading to assert that regulation of access to coastal freight drives these changes in business structure when the shipping task is an ancillary element.

Furthermore, the Coastal Trading Act has not caused a freight rate hike in the container sector, nor has it driven operators out of markets.

The AAA group (last remaining international container service) withdrew from Tasmanian services in April 2011 – more than a year before changes to coastal trading were introduced. The by-passing of smaller ports by large international container shipping is an international trend that has been growing for many years. A recent article (August 5th 2015) in the Wall Street Journal "Supersized cargo skips small US ports"[2] addresses precisely this phenomena with the Port of Portland in the USA being one of the latest mid-small ports being omitted from sailing schedules.

Advice provided to the Department in response to the options paper released in 2014 from the largest carrier of containerised coastal cargo around Australia (using foreign flag vessels under temporary licences), ANL, is that:

1) Cargo volumes in their business have grown by 25% since the introduction of the Coastal Trading Act

2) Freight rates have dropped by 3.5% during that time

3) Sea Freight is extremely competitive - being around 50% the cost of using rail.

Further advice provided to the Department in response to the options paper issued in 2014 includes the following:

"We see that the current system is working well. Cargo is moving with the potential for more, licence requirements are clear and so are the extra wage requirements under the FWA. The Department's Temporary Licence application process is straight forward, swift and in tune with cargo requirements.

There are currently no impediments to cargo moving in terms of freight rate or available space. The current regime gives some discipline and order in terms certainty of ongoing space and rate stability to customers. It is these factors that will enable cargo to be mode shifted off rail/road and onto sea."

The facts of the circumstances of the changes to coastal trading activity do not demonstrate that the Coastal Trading Act is the cause of the:

- decline of the fleet; or
- the withdrawal of services; or
- freight rate increases in container trades; or
- modal shift of general cargo away from container vessels.

[2] http://www.theaustralian.com.au/business/wall-street-journal/supersized-cargo-skips-small-us-ports/story-fnay3ubk-1227470059639

5.2 Specific comments on the detail of the Bill

5.2.1 S.7(1) Definition of coastal trading changed to coastal shipping

It is not clear what has driven the change in language from coastal trading to coastal shipping however we are concerned that use of the broader term 'shipping' in connection to an Act that is only interested in one part of that activity, being 'trading' may lead to misunderstandings.

Shipping is a much larger activity than the dedicated activities this Bill seeks to cover.

We note also that the language in the *Shipping Registration Act 1981* (Shipping Registration Act) regarding the Australian International Shipping Register (AISR) continues to use the term 'trading'. It is in this Act, the Shipping Registration Act, that MIAL supports the change in term from trading to shipping – as the AISR should be available to all forms of shipping, not just trading ships.

5.2.2 S.11 Repeal of exemptions

The 'openness' of the new system eliminates many of the reasons why an operator might prefer to be exempt from the requirements of the Bill.

However, for those that are currently holders of exemptions being bought into the coverage of the new Coastal Shipping Act 2015 (Coastal Shipping Act) does place an increased burden in terms of reporting and, potentially, meeting the requirements if they trigger the 183 days. These are considerable increases in obligations, administration and if 183 days is triggered, cost.

5.2.3 S. 19 - Potential for safety checks to be skipped

Notwithstanding that the same or similar provision exists in the existing Coastal Trading Act, s19 would skip the 'checks' that are in place to ensure that the ship is a suitable as outlined in s15. The default outcome ought to be that a permit is not granted without the proper checks being conducted.

5.2.4 S. 27 – Inconsistent treatment between transferees and original applicants

S27(5) provides that an application for transfer of a permit be decided within 2 business days. The checks that are required to be done on a transferee are the same as those conducted on the original permit applicant.

The question is therefore raised, how is it possible to conduct the relevant checks within 2 days for a transfer but it takes 10 days for the original applicant?

5.2.5 S. 34 – No surrender of coastal shipping permit

If there is no longer any business need to hold a permit it ought to be possible to surrender it in order that the business can conclude all activities in relation to the existence of a permit.

If the purpose of the 'no surrender' clause is to stop an operator surrendering a permit then reapplying, this thwarting the 183 day trigger, there is almost certainly other checks that the Department can do to manage that potential.

5.2.6 S. 36 – Contents and timing of reports

Reporting is required to be done every 6 months and reports are required within 15 days after the end of the period. The impacts of this frequency of reporting depends on whether or not the companies involved currently hold General Licenses or Temporary Licenses. Further comments are provided in the Regulatory Impact Statement section of this submission.

The reporting requirements are considerable for a regime that has no need for that data to be collected except to identify the handful, if that, of ships that might trigger the 183 days.

It seems a disproportionate burden to impose on an entire industry for the sake of capturing theoretically 10 ships (as identified in the RIS), in practice probably none.

If the entire purpose of reporting is to capture ships over 183 days, why not make the duration of the permit 182 days and attach conditions to any permit that is applied for in the six months thereafter? Therefore the vast majority will not be bothered with the data requirements.

5.2.7 S.38 – Australian crew requirement

Notwithstanding the negligible chance that any ship will ever trigger the 183 days and thus require an Australian crew member, the following are of concern:

- 38(2)(e) (i)refers to a person who holds a visa that allows the person to work in Australia as a master, chief mate, chief engineer or first engineer.

  Arguably, a Maritime Crew Visa – which is supposed to be a transit visa - provides precisely that right. Quite clearly any type of temporary work visa holder (s457, 400) is eligible.

  The government should clearly state whether these visas are considered to be appropriate.

  Regardless, the proposed amendment would do nothing to secure the critical skills base as any temporary work visa could be used.

- Further 38(2)(e) (ii) allows "a person who holds a visa that is prescribed by the rules…" it is not at all clear what the intent of this provision is or why the rule making process would be required.
- No exemptions are provided if the required crew are not available, which given the piecemeal and ad hoc reality of needing such crew is highly likely to be the case.

5.2.8 S. 112A – Minister's rules

It is not clear how the inclusion of rules as well as regulations provides clarity to industry with regard to which instruments will govern the conduct of the new shipping regime.

5.2.9 Part 4A Seafarers - S.41 (2) Modification of Seagoing Industry Award 2010

We cannot discern the meaning of this provision. No assistance is provided in the RIS. We are concerned that further confusion will arise as a result of regulations being used to override/amend the Award provisions. The industry requires certainty and simplicity, not another layer of instrumentation that will need to be considered to ensure obligations are met.

5.2.10 Shipping Registration Act – Division 2A - S.61AKA Modification of Seagoing Industry Award 2010

See previous comment.

5.2.11 Schedule 2 - Shipping Registration Act – 33A(1)(a)&(b) & 33A(2)

These amendments provide for a person who holds a visa that allows the person to work in Australia in the specified roles to be included in addition to an Australian resident.

As per our comment with regard to s.38, a Maritime Crew Visa – which is supposed to be a transit visa - provides the right to enter Australia as a crew member on board foreign or AISR ships. Quite clearly any type of temporary work visa holder (s457, 400) is eligible.

The Government should clearly state whether these visas are considered to be appropriate.

Again, the proposed amendment would do nothing to secure the critical skills base as any temporary work visa could be used.

6 Regulatory Impact Statement (RIS) - Option 4 (Preferred Option)

The MIAL submission only discusses the detail contained in Option 4 (Preferred Option), pg 74 – 76.

6.1 Benefits

The first benefit that is mentioned is that "Foreign ships may be able to increase their market share in sectors where there is not 100% market share for foreign ships currently,…"

Such increase in market share necessarily comes from loss of market share by an Australian business – either ship or other transport mode (modal shift is contemplated in the narrative that accompanies this statement).

The 'losses' involved from the loss/reduction in Australian business activity are not costed in the modelling – see comments in next section 'Costs'.

The philosophy that a "benefit" is to extinguish an entire local industry which, via multiplier effects adds $9 billion to GDP[3], not to mention social and employment opportunities, is flawed – particularly when the potential growth in Australian economic activity as a result of cheaper shipping is completely un-quantified.

The second benefit that is mentioned is the extension of the Coastal Shipping Act to cover the carriage of liquid fuel products from offshore installations. This is a positive move however we reiterate **that this matter would be better solved by tackling the source of the problem within the Customs Act rather than establishing a 'work around' in this Bill.**

The third benefit that is mentioned is securing the seafaring skills required for specialised landside positions, given the loss of an Australian maritime workforce as a result of this option. The requirement for ships spending more than 183 days in coastal shipping to employ a minimum number of Australians is described as "…would ensure the ongoing availability of personnel with seafaring skills and experience in the Australian economy." The following sections of the RIS then identify an estimate of 10 ships that would trigger the 183 days - which would equate to 20 positions required under the Bill.

It is widely believed that even 10 ships is an over estimation. Vessel operators will ensure that ships are chartered in and out to operate on the coast for less than 183 days to ensure they do not trigger this threshold and therefore will not need to comply with the conditions that then apply.

However, even if 10 (or even more ships) triggered the 183 days and the two positions on board were required to be filled, the conditions for employment are worded such that operators could avoid employing any Australian resident by employing from an offshore location and using crew on a temporary work visa. The advantage in doing so is that, in the main, international employment terms and conditions could then apply (noting that Part B and provisions of the FWA might also apply). Of course this entirely defeats the objective of securing a maritime skills base as no Australian resident or person with permanent work rights would be employed.

Even if operators did employ Australian residents, 20 individuals (or even 40 if employing two people for every job due to leave ratios) will NOT ensure the ongoing availability of the required personnel for specialised landside positions.

The fourth benefit is that some ships (the same ten as mentioned above) would still trigger the Fair Work Act and Seagoing Industry Award Part B. The continued application of increased wages (and other obligations) to some ships continues to impose a cost on some operations but not on all – hence an un-level playing field exists for users of shipping services depending on how they structure

[3] The Economic Contribution of the Australian Maritime Industry. PricewaterhouseCoopers. February 2015

their shipping task. Notwithstanding our comment above that in practice we believe almost no ship will actually trigger the 183 day threshold, **MIAL do not support the application of Fair Work Act and Seagoing Industry Award to foreign ships engaged in coastal trading - there is no benefit to any Australian entity or individual in continuing their application.**

6.2 Costs

"Under this option there is the potential for some Australian seafarer jobs to be lost, even with the requirements to maintain a minimum contingent…."

The minimum contingent is then estimated at 10 ships, which would equate to 20 positions required under the Bill.

Previous options in the RIS spoke of the loss of the 1177 jobs, based on the Australian Maritime Industry Census data. The Census also states "*While the response rate for this survey (61%) is considered high for a government to business survey, discussions of the results by the Forum indicate that key workforce employers have not participated. This means that the results are known to have captured only a subset of the maritime workforce*."(pg 3)

MIAL estimate the number of jobs that would be lost from General License and Transitional General License ships to be at least 1300. This figure is only the seagoing jobs that would be lost and does not include the shore-side positions that would also be lost when business either restructure to employ foreign sea-staff (i.e. use international HR and technical departments to deal with overseas flag states and crewing companies) or close their doors as a result of the Bill.

In any event, "the modelling undertaken for the cost-benefit analysis did not include the cost of the potential losses of Australian seafarer jobs." Nor did it estimate or model the shore side job losses or the multiplier effects/flow on effects of the job losses (footnote 18, pg 106).

These costs ought to be included in the modelling.

The RIS states that "..any impact on Australian jobs must be considered in the broader context of increased domestic shipping activity -…". This statement is unsupportable. There is no evidence to suggest that shipping's market share would increase as a result of the changes proposed. There is no barrier to ships carrying as much cargo as they wish to. There is a question about which ship carry which cargoes, but since contestability issues have been limited to a very small handful of dry bulk carriers it is unsupportable to claim that this has led to any meaningful loss of domestic shipping activity.

Even so, the RIS does not quantify the jobs that would supposedly be created and therefore it is erroneous to simply offset certain losses against possible gains without first determining what those possible gains would be.

6.3 Deregulatory Savings

6.3.1 Licensing Framework

The data collection requirements under the existing Coastal Trading Act were designed to provide a comprehensive picture of trade flows and behaviour. This would enable Ministers and Governments to make decisions and policies in the best interests of the Nation with the proper knowledge and data of the shipping sector. The detailed data provided under the existing Coastal Trading Act could provide a level of detail far superior to existing data sources such as those available from the ports which are released annually by the Bureau of Infrastructure Transport and Regional Economics in publications such as Australian Sea Freight.

Given that the proposed new Coastal Shipping Act has no objective relating to the promotion of Australian flagged ships the question arises, what is the point of this detailed data collection?

There appears to be no need to collect this data and the burden of doing so adds to business costs.

The existing requirements are slightly different between General Licence holders (Australian flagged) and Temporary Licence holders, being somewhat less onerous on General Licence holders.

The RIS (pg 75) states that one of the deregulatory savings is a reduction in reporting. This is true only for the companies that were previously reporting for Temporary Licence ships. Companies that were operating General License ships actually face a doubling of the administrative burden via reporting under the proposed new regime.

This outcome has been overlooked and is not modelled in the RIS.

6.3.2 Terms & Conditions of Employment - 183 days

The RIS estimates 10 ships would trigger the 183 days that would be subject to the requirement to employ a minimum number of Australians (or those with Australian work rights) and apply Part B of the Seagoing Industry Award (and presumably still the Fair Work Act and National Employment Standards as there are no proposals to change those).

It is widely believed that even 10 ships is an over estimation as vessel operators will ensure that ships are chartered in and out to operate on the coast for less than 183 days to ensure they do not trigger this threshold and therefore need to comply with the conditions that then apply.

The retention of a great deal of legislation that will in all likelihood never be triggered seems like an opportunity for further red-tape reduction.

The application of the Fair Work Act to ships trading on the Australian coast adds no benefit to the Australian industry or the national economy and is not supported by MIAL.

Notwithstanding that we do not believe any ship will trigger the 183 day limit, those ships would then be required to employ a minimum number of people with Australian work rights.

7 Consultation

MIAL has been very disappointed with the lack of a collaborative and consultative process that has led to the development of this legislation. Poor consultation has resulted in a flawed solution being developed. The maritime and shipping industry is very diverse and complex with a wide range of interests. Different sector and trades behave very differently as the drivers and pressures are entirely different.

MIAL appeals for a better understanding of the differences between trade types and again stresses that a one size fits all solution is unlikely to work given the complexity of the issues for each sector of the coastal trading industry.

The consultation process undertaken to reach this proposed Bill was compromised in the beginning by the private meetings that were held in response to the Discussion paper in 2014. Unfortunately such meetings do not allow scrutiny of the claims made and as such can result in a distortion of the facts and the impacts. An example of this is that the RIS quotes, and appears to rely upon, one company's freight rates. One company does not make an entire industry. The fact that there is only one example provided shows how limited any 'problem', if one exists, is.

In MIAL's view, consultation on the proposed solution was extremely limited. The industry round table on 2nd February is noted as including "The attendees at this meeting were the largest companies and stakeholder groups in the industry,…" This is a misrepresentation. A number of vocal but relatively minor cargo interests were included at the same time the largest carrier of coastal containers (ANL) was not invited.

Participants were provided with 2.5 days notice of the event which meant that several CEOs and senior executives were unable to make the meeting. This was the only discussion that took place on the development of the proposed Bill. The short notice, omissions in invited attendees, short duration of meeting, tabling of paper on the day all equate to a very limited consultation.

What this compromised consultation process has led to is a policy formulation that is unlikely to deliver many of the objectives it sets out to achieve (such as ensuring the ongoing availability of the required personnel for specialised landside positions). Further, the position this Bill proposes to effectively deregulate the coastal trades will not provide industry with any certainty that this option would be supported in the long-term by subsequent changes in Government.

Proper consultation would have identified these shortcomings; allowed the issues to be unpacked and addressed one by one at the root cause (Fair Work Act, Customs Act, Coastal Trading Act, etc) and allowed a more robust alternative to be developed and put to the Parliament for consideration.

8 Customs issues

Since the introduction of the Coastal Trading Act, there have been a number of issues relating to Customs importation of vessels as a result of Customs changing their behaviour / rules upon which importation is carried out. This has resulted in unsustainable and costly additional burden to industry, with little or no benefit to the nation. Furthermore, there are a number of circumstances whereby threatened importation has resulted in operators taking a significant amount of business elsewhere.

8.1 Liquid fuel product from an offshore facility

The inclusion of these voyages within the regime is supported as a sensible and straight forward solution to the issue given that the vessels are operating like any other just between different jurisdictional boundaries.

8.2 Docked for Service

MIAL support the intention of this provision to assist vessels that have been subject to Customs Act importation in the past avoid that impost in the future. However, MIAL are concerned that by 'fixing' the Customs issue for dry docking within the new Coastal Shipping Act that other operations also affected by Customs importation but unrelated to coastal shipping will not be captured in the solution. Not all ships undertake activities that place them within the coverage of the proposed Coastal Shipping Act. Such vessels include scientific research activities and Antarctic supply.

Assuming there is whole of Government support for the proposed 'fix' it is not clear why this solution needs to be provided in the Coastal Shipping Act and why it cannot be delivered via the primary agency with responsibility, Customs. Such a move fails to meet the Governments de-regulation agenda and introduces unnecessary complication and process when the solution could readily be provided by the primary agency, Customs.
Suggested fixes include:

- Provide for circumstances whereby importation is not in the 'national interest'
- Introduction of a timeframe during which vessels in Australia will not be imported (e.g. 90 days or some other timeframe)
- Exemptions for vessels using Australian drydock facilities: Section 68(1)(i) of the Customs Act allows the Regulations to set out situations where importation won't apply. A new Regulation could read as follows:

  "A ship entering a drydock facility in Australia is exempt from section 68 of the Customs Act where the period the ship spends in the drydock facility does not exceed [30?] consecutive days."

9 Australian International Shipping Register (AISR)

MIAL support the changes proposed as they make the AISR a more attractive option for registering a ship.

Further MIAL suggest that section 61AB for the Shipping Registration Act be redrafted as follows to allow for a broader range of vessel activities to be captured, such as scientific research, offshore activity, etc.

The broader the range of activities that are covered, the greater the number of vessels that might take up the option and the larger number of Australian officers that will be employed on board these vessels and ashore to provide the strategic operations and control.

10 Why regulate coastal trade?

Many countries around the world recognise both the importance of having a strong and sustainable local shipping industry and the need to regulate access to coastal trade to ensure its long term viability. The various approaches to cabotage range from highly restrictive (US, Japan) to open and flexible (Australia, New Zealand)[4]. It is difficult to find a country or a region (in the case of the EU) with significant coastal trade that does not have some form of cabotage.

A snapshot of coastal shipping restrictions occurring in other countries can be found in Table 1 below.

Table 1: Comparison of other countries with regulated coastal shipping.

Country	Regulated?	Policy measures	Policy objective
US	Yes[5]	Highly restrictive. Coastal trade restricted to US built, owned, crewed and flagged ships.	Promotion and maintenance of the US merchant marine industry.
European Union	Yes[6]	Maritime transport services within a Member State, i.e. purely national connections, can be offered by companies of other Member States. Some member states restrict access to flags of EU members, others don't.	Liberalization between EU members while supporting the policies of EU member states to support their own shipping industries. Increasing opportunity to access EU cargo while maintaining some restrictions to EU flags.
Canada	Yes[7]	Coasting Trade Act restricts access to coastal trade and short sea shipping to Canadian ships unless not available.	Maintain and enhance Canadian short sea shipping fleet and grow maritime cluster.
India	Yes[8]	A flexible, preferential cabotage system. Foreign flag ships can be used where an Indian vessel is not available. Also some restrictions on regular international voyages.	Freight rate and tonnage access stability.
Japan	Yes[9]	Restricts access to coastal shipping of cargo or passengers to Japanese ships, except under permit.	National security, the reliable transport of everyday goods for local residents and securing the employment of domestic crew members.

[4] See International Transport Forum: *Liberalisation in Maritime Transport, Mary R. Brooks*

[5] See the *Merchant Marine Act of 1920*, also known as the *Jones Act*

[6] See EU Council Re 3577/92/EEC (marine cabotage)

[7] See *Coastal Trading Act 1992* and *Customs and Excise Offshore Applications Act 1983*

[8] See *Merchant Shipping Act* (India) s407

[9] See the Ships Act, article 3.

New Zealand	Yes but limited[10]	Restricts access to coastal trade to NZ ships or ships on demise charter to a new Zealand based operator who employs employees under NZ law – or a foreign ship who passes by NZ as part of an international voyage. Minister may authorise another ship if none of the above are available on terms the Minister thinks appropriate.	As part of a move to liberalized approach to a range of public policy areas in the 1990's. There are growing calls to reintroduce tighter regulation after the Rena incident to ensure appropriate safety and environmental protection.

Australian maritime transport is subject to competition from foreign companies operating under significantly more favourable cost structures and commercial taxation arrangements. The strategic benefits of having a national shipping industry require that maritime transport be regulated differently to other transport modes in Australia.

Comparisons can be drawn between maritime transport and aviation, which is potentially also subject to international competition and similarly, a cabotage regime.

The existence of a cabotage regime is not unusual – indeed Australia would be quite alone in foregoing any local participation in our own domestic coastal trades.

There is room for improvement in the current Australian cabotage regime as provide in the Coastal Trading Act. This is discussed in the next section of this submission.

11 Changes that should be made within the existing Architecture

As previously articulated in submissions, MIAL is supportive of the following changes to the existing Coastal Trading Act:

- Removing the 5 voyage limit
- Fast tracking some applications and being more flexible with variations - Voyages where there is no General Licence (GL) vessel available and/or willing to utilise the contestability provisions should be exempt from the existing contestability and notification requirements, thereby expediting approval. This should include waiving the need for 'voyage notifications'; allow pre-load flexibility; and in the liquid fuels industry allowing on-water changes in the event of supply disruptions. Whilst there is no GL vessel able to utilise the contestability provisions, the reporting of voyage details could occur at the conclusion of each voyage.
- Removing the application of the Seagoing Industry Award Part B and the Fair Work Act. The application of the Fair Work Act to ships trading under temporary licences should be removed as it adds no discernible benefit to the Australian industry or national economy and creates an enormous red-tape and compliance burden to the ships so affected.
- Provide priority access to coastal cargo to AISR ships, thereby promoting their existence and use providing a competitive Australian option
- Move away from a "one size fits all solution" and tackle the issues specific to each trade type separately and, where necessary, distinctly.

In addition, MIAL suggests that it is possible to improve the process of contestability via the employment of professional maritime arbitrators. Please see next section.

[10] See *Marine Transport Act 1994* (NZ), s198

11.1 Contestability

Our suggestion is that a professional body be charged with the process of assessing any contests/disputes that might arise between a GL operator and a TL applicant. It is suggested that the Australian Maritime and Transport Arbitration Commission (AMTAC) be considered for this task.

The Australian Maritime and Transport Arbitration Commission (AMTAC) is a Commission of the Australian Centre for International Commercial Arbitration (ACICA) with support from the Federal Attorney General's Department. AMTAC's objectives are to support and facilitate the conduct of both international and domestic arbitration and mediation in respect of maritime and transport disputes and to promote Australia and the region as a recognised leader in maritime, transport, education, scholarship and alternate dispute resolution.

AMTAC Panellists are senior practitioners and arbitrators with experience in international arbitration in the maritime or transport field. As a Commission of ACICA, all AMTAC Panellists must be ACICA Fellows. Panel membership must therefore be approved by the ACICA Board and the AMTAC Executive.

See amtac.org.au for more details.

12 How do we maintain an Australian presence?

If the nation wants to retain an Australian flag presence as indicated on numerous occasions by the Deputy Prime Minister as being a desirable outcome (which could also be considered more broadly as Australian content in maritime activities) then the following are required to make Australia a truly competitive place to base a business from:

12.1 Corporate Tax

The zero tax rate of income tax on profits derived from shipping activities has done a lot to facilitate investment in newer, more efficient tonnage and allowed Australian maritime businesses to plan for the future. Already hundreds of millions of dollars have been invested on the back of this initiative that was put in place in 2012.

Albeit a very worthwhile measure in its own right, it does fall short of being internationally competitive with other nations in the region due to the tax treatment on the distribution of profits. This makes Australia uncompetitive as a place to base ship owning and operating businesses from and therefore we have not seen a growth in the Australian fleet as a result. This is readily addressed via changes to the treatment of dividends and MIAL strongly believes that with the changes below adopted Australia would become a location of choice for ship ownership and investment.

MIAL recommends the following changes could assist with creating a fiscal environment that is attractive to ship operating businesses:

a) Introduce deemed franking credits in respect of dividends to resident shareholders.
b) Introduce dividend withholding tax exemption in respect of dividends to non-resident shareholders.
c) Extend application of taxation structure to broader shipping industry including the offshore sector.

12.2 Seafarer tax

The seafarer tax offset is critical to the operation of the Australian International Shipping Register as it addresses most of the disparity in the employment costs of senior officer roles (e.g. the Master or Chief Engineer) for Australian resident workers versus foreign workers. Currently the seafarer tax

offset is only available to a small number of Australian employers as there are only six Australian registered vessels that participate in international trade.[11]

Governments throughout the world have introducing concessionary tax regimes for international seafarers as a means of reducing manning costs to an internationally competitive level. Concessionary tax regimes have, for example, been introduced in Denmark, Germany, Netherlands, France, Singapore, Norway, and UK. Many developing countries have adopted similar polices including South Korea, Thailand, India and the Philippines.

In many cases, these concessionary regimes effectively comprise a total exemption from individual income tax.

The Australian approach via the seafarer tax offset to employers achieves a consistent outcome by lowering the employment cost of Australian seafarers to make these comparable with seafarers from other countries.

This measure must be retained and importantly improved as outlined by MIAL in our previous submission, and repeated here:

1) The relevant legislation amended to ensure the benefit is fully realised in accordance with the legislative intent.

The way the relevant legislation is drafted means that some company's corporate accounting structures are such that they are unable to realise the full benefit of the legislative intent. This could be rectified with a minor administrative amendment.

2) Made available to all vessel types.

Broadening the availability of the measure to companies providing services to the offshore oil and gas industry will provide flexibility to the industry and the opportunity for Australians to be deployed on vessels engaged in overseas operations.

3) Made available to Australian domiciled employers of Australian seafarers, regardless of the flag of the ship they are employed on.

Allowing the seafarers tax offset to be made available to Australian domiciled employers of Australian seafarers, regardless of the flag of the ship they are employed on, substantially increases the opportunities for Australian seafarers to gain the valuable experience of being deployed overseas and increases the flexibility of their employers.

4) Made available to all staff, regardless of rank or role.

The Maritime Labour Convention 2006 definition of a seafarer is as follows:

> *"all persons who are employed or are engaged or work in any capacity on board a ship to which the Convention applies"*

The definition of a 'seafarer' for the purpose of the seafarers income tax offset should be amended to incorporate the MLC definition. This would increase the opportunity and scope for employing Australians in a wider range of seafaring roles.

[11] Department of Infrastructure and Transport (2013), 'Australian sea freight 2012-13', available at: https://www.bitre.gov.au/publications/2014/files/asf_2012_13.pdf

Maintaining the seafarers tax offset and expanding its application and scope would lead to more Australian jobs, more Australian content, and the nation would be better positioned to reap the benefits of the booming Australian cruising and offshore oil and gas industries as well as creating valuable training and development opportunities for Australian seafarers in the international blue water sector.

12.3 Additional measure to help secure our national skills base.

MIAL propose that a complementary regime to the current seafarer tax offset be introduced that allows individuals to manage their own tax affairs.

The existing seafarer tax offset assumes an employment relationship between an Australian resident tax payer and an Australian company. This limits the opportunity for Australian seafarers to work for international companies and remain resident tax payers; which in turn limits the number of Australian's working as seafarers who would be available to provide the strategic skills that the nation needs.

The purpose of this form of seafarers' tax exemption is to enable Australian seafarers who are resident tax payers to accept employment from a foreign company in international shipping at competitive rates. At present, there are a few Australian officers employed in international trading vessels and almost none who are resident tax payers. This is because international wage rates are lower than Australian wages, as in many circumstances seafarers engaged in international shipping are tax exempt from their countries of residence income tax regime (e.g. the UK).

At present, Australian seafarers who wish to retain residency will be subject to income tax on their wages. As a foreign entity employer will not withhold tax on behalf of the Australian Tax Office (ATO), an Australian seafarer resident must lodge an income tax return for their earnings for the relevant financial year, and assuming they are tax residents, will be issued with a tax bill by the ATO after an assessment of taxable income has taken place.

Under this proposal Australian seafarers employed by foreign companies on qualifying ships would not face this tax liability. This will mean Australian resident seafarers will be in a financial position to accept lower gross salaries, as they will not be subject to tax and their take home pay would be similar to that which they would receive if employed in the Australian market where they would be subject to tax.

12.3.1 Benefits

There will be a benefit to the seafarer by opening up a competitive employment market without the seafarer having to accept a significantly reduced net salary.

There will be a benefit to the nation as the pool of qualified seafarers grows, and ultimately they will return home and fill strategically valuable shore based roles in maritime services.

Further, this measure will help address a significant shortfall in berths able to be utilised on Australian vessels for Australian seafarers to fulfil their sea time requirements by encouraging trainees to accept appointments on foreign vessels.

The purpose is to enable Australian seafarers to examine overseas opportunities without receiving significantly lower income than they would by remaining in the Australian market.