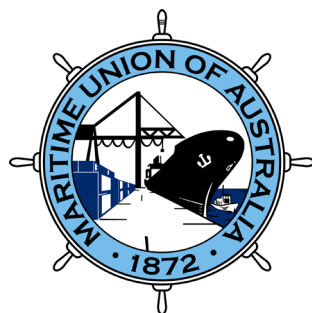




Reform of coastal trading regulation – creating a better ship licencing system for a balanced system of maritime cabotage

MUA Policy Briefing Paper



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Introduction

The Australian commercial shipping industry must be viewed as a vital component of national freight infrastructure, integrated with the functionality, productivity and efficiency of other industries such as manufacturing, agriculture/aquaculture, resources, energy and tourism, and linked through ports to the rail, road and air freight and passenger sectors.

The continual decline in Australian based maritime economic activity and Australia's maritime skills base puts at risk Australia's sovereign industrial and marine capability, and efficiency of its freight infrastructure. It also undermines the Australian passenger and cruise sector, and puts a brake on building a maritime cluster in Australia.

A part of the solution is restoration of a balanced system of maritime cabotage, similar to the aviation cabotage regime, involving comprehensive reform the current ship licencing system created by the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) to provide preferential treatment, a level of genuine protection and a level playing field for Australian ships.

Reform of the CT Act – a summary

The CT Act requires the following reform:

- Amend the Object clause to remove ambiguity and to clarify the Act aims to support Australian ships¹;
- Extend the coverage of the CT Act to include intrastate trade and specified ship types/ship operations not currently covered;
- Establish an independent industry body as a statutory authority to supervise the licencing of ships to operate in coastal trading;
- Provide for separate licencing procedures for cargo ships and for passenger ships (see an accompanying policy briefing paper on the cruise ship sector);
- Provide for licences to be issued to a ship (or ship fleet), rather than to the voyage of a ship;
- 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 General Licence (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 a new licence type (in addition to a GL and a TL) for foreign registered ships operating under a demise charter with full Australian crews (similar in some respects to the former Transitional General Licence – TGL), designated as a modified general licence (MGL).
- Provide for the primacy of the role of ship providers, particularly GL and MGL holders, rather than primacy on the role of shippers (cargo interests);

¹ See the Judgements in the Full Federal Court *CSL Australia Pty Limited v Minister for Infrastructure and Transport* [2014] FCAFC 10 26 February 2014 and *CSL Australia Pty Limited v Minister for Infrastructure and Transport (No 2)* [2014] FCAFC 35 of 28 March 2014 <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2014/2014fcafc0010> and <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2014/2014fcafc0035>

- Establish a nomination process providing genuine protection for GL holders in both cargo and passenger trades to indicate the voyages, cargoes or routes that they wish to contest aimed at protecting national interest trades such as Bass Strait, expedition cruise ships and ships servicing regional and remote communities;
- Establish a national strategic fleet including a supportive industry policy package to assist participating shipowners/operators/charterers (see an accompanying policy briefing paper on the strategic fleet);
- Introduce a commercial arbitration process to help facilitate fair commercial outcomes;
- Establish a procedure for establishing price reviews/price monitoring by the Australian Competition and Consumer Commission (ACCC) or another body to eliminate price gouging in ship trades where there is only one ship supplier;
- Strengthen the licencing procedure for General Licenses that introduces a new procedure for surrendering a GL and a procedure for the intended withdrawal of a GL ship from a nominated coastal trade; and
- Repeal s112 (Customs treatment of certain vessels) in conjunction with proposed reform of the Migration Regulations 1994 and *Customs Act 1901* (see an accompanying policy briefing paper on reform of the maritime crew visa system that addresses reform of the Migration Regulations 1994 and Customs Act 1901).

Reform of the CT Act – the amendments in detail

Amend the Object clause in the CT Act

- The objective is to remove ambiguity in the Object as identified in Australian Federal Court judgements, and to make it explicit that the primary Object of the CT Act is to provide preferential treatment for Australian ships in coastal trade. The proposed new Object is set out in **Appendix 1**.

Extend the operation of the CT Act

- The objective is to extend the Act to cover intrastate coastal trading and to cover specified ship types/ship operations not currently covered:
 - (a) Extend coverage to intrastate trading:
 - (i) To streamline and harmonise the economic regulation of all Australian coastal shipping;
 - (ii) To restore the economic regulation of intrastate shipping as previously applied in Qld and WA prior to commencement of the *Marine Safety (Domestic Commercial Ship) National Law Act 2012* (National Law Act) and reform of State marine Regulations; and

(iii) To ensure that coverage of the economic regulation of shipping is consistent with the coverage under harmonised marine safety law, shipping industry workers' compensation law and of shipping industry occupational health and safety law (subject to passage of a modified Seafarers and Other Legislation Amendment Bill 2016²).

(b) Extend the types of ships and ship operations that the CT Act applies to, including:

(i) Defence Force auxiliary fleet ships (that that will in future be defined as Strategic Fleet ships) that may be civilian crewed and or operate at times as a commercial ship.

(ii) Specified types of offshore ships e.g. ships transporting oil/condensate/gas from offshore facilities to a mainland refinery, storage or other facility.

(iii) Large fishing or aquaculture ships and fishing fleet support ships such as marine product factory ships i.e. to those 35 metres in length and above.

(iv) Ships used as a temporary bulk or liquid storage facility.

Establish a coastal ship licencing authority

- The objective is to provide for the establishment and operation of an independent industry body (a statutory authority e.g. an Australian Coastal Ship Licencing Authority) to supervise the licencing of ships, consistent with legislated criteria, to be utilised in considering applications for ship licences. This is designed to introduce commercial principles into ship licencing and to remove the role of Departmental officers acting under delegation from the Minister in determining commercial decisions about coastal ship operations. The proposed functions of the Authority are set out in **Appendix 2**.

Reform the application process for the issuing of Temporary Licences (TL) for cargo ships

- Consistent with the revised Object clause and the proposed establishment of an Australian Coastal Ship Licencing Authority it is proposed that the TL process be reformed by:
 - » Amending the contestability provisions by replacing the current provisions with a requirement for commercial negotiations between: (i) the GL holder who contests for a TL cargo; and (ii) the shipper of the cargo requiring transportation services, 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 where the trade volume requires ship capacity beyond the capacity of a suitable and available GL ship/s (in circumstances where the GL holder has first right to provide the TL ship or ships);
 - » Establishing a government tender process for the supply of GL ships where no suitable GL ship (or ships) is available to meet shippers' transportation needs;

² The Seafarers and Other Legislation Amendment Bill 2016 remains in the Parliament due to Senate opposition to the Bill arising from strong trade union and shipping industry representations that the Bill should not be passed in its current form. One provision in the Bill is to align the *Occupational Health and Safety (Maritime Industry) Act 1993* with the model *Work Health and Safety Act 2011* (which would further harmonise work health and safety law in Australia).

- » Providing for commercial arbitration to help facilitate fair commercial outcomes; and
- » Providing for establishment of price reviews/price monitoring by the ACCC or another body to eliminate price gouging in ship trades where there is only one ship supplier:
 - ▶ A summary of the operation of the proposed new TL application process for cargo ships is provided at **Appendix 3**.

Providing a separate application process for issuing Temporary Licences (TL) for passenger ships

- Consistent with the revised Object clause and the proposed establishment of an Australian Coastal Ship Licencing Authority it is proposed that there be a separate licencing procedure for passenger/cruise ships. Note that this provision is predicated on repeal of the Ministerial exemption from the operation of the CT Act to large cruise ships. Note also that the current exemption does not apply to Bass Strait passenger services (though this route is proposed for declaration by the proposed Authority as a national interest shipping trade, route or market segment).
- The objective is to provide a separate process for dealing with applications for TLs for passenger ships that is distinguished from the process for dealing with applications for TLs for cargo ships. The key features of a TL licencing process for passenger ships are:
 - (i) That (a) A holder of a General Licence (GL, or a holder of a modified general licence – a MGL) for one or more ships; or (b) The owner, charterer or agent of a non-licenced ship or ships, may apply for a TL for a large passenger ship (large passenger ships to be defined so that, inter alia, they do not include expedition cruise ships which will be fully protected as AGSR ships);
 - (ii) An application for a TL for passenger ships may be for one or more ships;
 - (iii) The Authority must issue a TL to the ship or ships subject to the application, for a period of up to 3 years, subject to conditions, such as
 - (a) The applicant must advise the Authority, no later than 1 year before expiry of the licence period, of any reason why it cannot transition at least 1 of its TL ships to a GL or MGL ship, on commencement of the next licencing period; and
 - (b) A formal commitment to employ and train crew (marine and non-marine) from Australia and the nations of the South West Pacific including PNG, Timor Leste and Indonesia;
 - (c) A commitment to secure a union negotiated collective agreement for all marine crew on the ship, that is based on the ITF Total Crew Cost (TCC) Agreement, and
 - (d) A commitment to secure a union negotiated collective agreement for all non-marine crew on the ship.

- » Note that an unlicensed large passenger ship will be permitted to dock, but will not be permitted to embark or disembark passengers, at more than one Australian port.
- Note that the intention of this legislative reform is that GL ships will be eligible for all the shipping taxation incentives, while a MGL ship will be eligible for only some of the shipping taxation incentives.
- It is also proposed that:
 - » The definition of a large cruise ship be amended from 5,000 GT to 10,000 GT and that the passenger delineation be increased from 100 to 300; and
 - » Foreign operators authorised to undertake voyages with a TL ship should not be allowed to deviate from published routes/itineraries.

Complementary reform of ship licensing arrangements

- Remove Emergency licences as a licence type that can be issued under the CT Act
 - » As not a single Emergency licence has been issued in over 8 years since the CT Act commenced in 2012 it is clearly of no value to industry and should be removed as a licence type. The MUA nevertheless proposes that the Authority have the power to issue a TL for a ship to transport small volume and specialist cargoes on an irregular basis and at short notice under specified conditions – see **Appendix 3**.
- Strengthen the application process for a General Licence (GL) consistent with the revised Object clause and the proposed establishment of an Australian Coastal Ship Licencing Authority:
 - » The objective is to:
 - (a) Specify the type of work visa that a non-national seafarer must hold to be eligible to be employed on GL ship, noting that s13(2)(b)(iii) of the CT Act contemplates that seafarers on GL ships may be holders of a temporary visa;
 - (b) Specify the marine qualifications that seafarers must hold to be eligible to be employed on GL ship, noting that temporary visa holders may hold an internationally recognised certificate that is not accompanied by an Australian VET qualification;
 - (c) Require that the Authority must take into account certain matters when deciding on an application for a GL. For example, to enhance Australia’s supply chain security, it might be appropriate that legislation require a specified level of “Australian connection or content” in the transportation components of critical economic cargoes, particularly energy, including refined petroleum products, as well as high value cargoes e.g. LNG, and other trades such as high security/high consequence cargos (e.g. ammonium nitrate, weapons, munitions, explosives) and dangerous goods cargos (e.g. Av gas, other liquid and gas fuel);
 - (d) Specify a timeframe under which the Authority must provide reasons for a decision not to approve a GL application;

- (e) Specify that a copy of a TL must be immediately made available to any crew member or authorised officer of a seafarer representative organisation upon request;
- (f) Specify the timeframe for the Authority to give written notice of the cancellation to the holder of a GL;
- (g) Specify the timeframe by which the Authority must cause a summary of the information contained in the annual reports provided by GL holders to be published on the Authority's website;
- (h) Strengthen the procedure for surrendering a GL; and
- (i) Provide a procedure for the intended withdrawal of a GL ship from a coastal trade.
- Provide for a new licence type, a modified general licence (MGL) (whereby the ship is foreign registered but employs Australian crew) being a licence granted to a ship that:
 - (i) Operates under a demise charter as defined by s9 of the *Shipping Registration Act 1987* (SR Act) and is not registered on the AGSR;
 - (ii) Uses an Australian port as its home port;
 - (iii) Is crewed by Australian national seafarers sourced from an Australian crewing corporation; and
 - (iv) Is operated by an Australian corporation, or a corporation that operates in Australia, even if its ship chartering operations are conducted by a subsidiary or unit of the company located or headquartered outside Australia.
- Update definitions in the CT Act. Key new definitions include:
 - » *National interest shipping trades, routes or market segments* means shipping trades, routes and markets which are declared by the Authority as being of such national significance that all coastal shipping in the declared trade, route or market segment must take place in GL ships. It is intended that these include, among possible others:
 - (i) Ships servicing Bass Strait.
 - (ii) Ships servicing remote and regional communities.
 - (iii) Ships servicing the supply chains (to be defined in the CT Act) of key national economically significant industry sectors, such as: steel, aluminium and energy manufacture/production (industries to be defined and be specified in Regulations).
 - (iv) Ships providing expedition cruise services.

Note i: These ships are cabotage ships; and operate under the provisions of the CT Act. Ships under (i), (ii) and (iv) must be on the AGSR and have a GL; while ships under (iii) can be either AGSR ships issued with a GL, or foreign ships issued with a modified general licence (MGL), meaning they must be crewed by Australians.

- *National strategic fleet ships*, means ships which are of national strategic importance to the nation, and provide a social and or community service benefit to the nation. National Strategic Fleet ships include:

Commercial ships

- (i) A core fleet of refined petroleum product (RPP) and oil tankers (liquid bulk ships) involved in domestic and international supply chains and providing national fuel security, and also temporary oil/RPP storage capacity to supplement onshore storage facilities;
- (ii) A core fleet of dry bulk commodity ships, necessary to service Australian heavy manufacturing industry;
- (iii) A core fleet of ships capable of transporting containerised cargo, essentially coastal feeder ships to service hub ports;
- (iv) A core fleet of multi-purpose ships (MPPs) to deliver machinery and other non-standard (over size/over mass [OS/OM]) cargoes required in particular for the agricultural and mining industries:
 - » Some of these ships are necessary to service Bass Strait; and also, regional and remote ports/communities (which by necessity involves a community service obligation (CSO));
- (v) Offshore wind energy installation and maintenance ships:
 - » Offshore wind energy turbine installation and maintenance ships are included because of their strategic significance in developing and maintaining Australia's renewable energy resources required to meet Australia's greenhouse gas emissions target. These ships are in limited supply internationally, and only a small proportion are equipped to build the large turbines further offshore that are proposed for Australia. They are purpose-built ships with more deck space than a typical offshore oil and gas support ship, they cope with more severe weather and as a result can reduce overall installation durations. They require support to ensure that Australia can access the limited global supply of these specialist ships for offshore wind energy turbine installation.

Government/non-commercial ships

- (vi) Emergency towage vessels (ETVs - marine rescue and salvage ships) operated by the Australian Maritime Safety Authority (AMSA);
- (vii) Emergency response ships e.g. the *Aurora Australis* (if transitioned to an emergency response role when it completes its Antarctic duty).
- (viii) Research, supply and oceanographic ships such as those operated by or chartered to the CSIRO, the Australian Antarctic Division of the Department of Environment and Energy, and marine authorities such as the Great Barrier Reef

Marine Park Authority;

(ix) Border Force ships;

(x) Certain Defence/Navy ships such as auxiliary fleet ships (particularly non-combat ships such as Navy training ships, auxiliary oiler replenishment (AOR) ships, supply ships etc.); and

(xi) Training ships such as those operated by the Australian Maritime College (AMC).

Note i: The proposal is that these ship categories be specified in Regulations. These are not cabotage ships and are not subject to the main provisions of the CT Act but for national strategic and security reasons must be on the AGSR (and if involved in coastal trading, hold a GL), and in the case of certain Defence/Navy ships, operate under the Naval Flag Administrator. It is intended that commercial ships in the Strategic Fleet be entitled to the shipping tax incentives.

Note ii: Offshore wind turbine installation ships are included because of their strategic significance in developing Australia's renewable energy resources required to meet Australia's greenhouse gas emissions target. These ships are in limited supply internationally, and only a small proportion are equipped to build the large turbines further offshore that are proposed for Australia. They are purpose-built ships with more deck space than a typical offshore oil and gas support ship, they cope with more severe weather and as a result can reduce overall installation durations. They require support to ensure that Australia can access the limited global supply of these specialist ships for offshore wind farm construction.

Reforming the shipping taxation incentives

While the 2012 shipping reform package included taxation incentive measures, they have not delivered their intended outcome and need to be adjusted. Effective and fit for purpose financial incentives, which have only a modest financial cost, are essential if Australia is to match the incentives available to shipowners in other nations and attract investment in new ships.

For ship owners and ship operators the key priority is to resolve 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. This is a critical reform to restore and encourage investment in Australian ships.

The proposed reform of the shipping taxation incentives is aimed at ensuring Australian incentives are comparable with the shipping tax incentives provided in nations such as Singapore and Hong

Kong and to create a positive investment climate for investors which will also help build a maritime cluster in Australia.

The shipping taxation incentive reform in detail

For ship owners and ship operators:

- Resolve 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 Commonwealth Government needs to amend the shipping income tax exemption provisions in various tax laws³ 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.
- Amend the definition of core shipping activities 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. To achieve this, the exclusion of offshore industry vessels in s10(4)(c) of the *Shipping Reform (Tax Incentives) Act 2012* would need to be removed:
 - » The possible extension of the taxation incentives to vessels operating in the offshore oil and gas industry is aimed at providing incentives for those vessel owners/operators to register their vessel on the AGSR, which is a core eligibility requirement to gain access to the tax incentives. It would also require the owner/operator of such ships to have in place a training plan that meets the training requirements specified in Part 2 of the *Shipping Reform (Tax Incentives) Regulation 2012* i.e. to have a cadet/trainee in Master, Engineer and Rating/Steward on each ship accessing the tax incentive. This concession to the offshore sector is designed to help build the maritime cluster.
- Amend the eligibility for access to the Shipping Exempt Income tax incentive for Australian operators so it applies to operators of modified general licence (MGL) ships (a proposed new licence type applying to foreign ships employing Australian seafarers).
- Amend 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.

³ These are: *The Income Tax Assessment Act 1997* and the *Income Tax Assessment Act 1936* (as amended by the *Tax Laws Amendment (Shipping Reform) Act 2012*).

For seafarers:

- Amend the *Income Tax Assessment Act 1997* at s61-705 (Who is entitled to the seafarer tax offset), so the offset is available in respect of 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).
 - » This is particularly important given the MUA proposal to establish a new coastal shipping licence, the modified general licence, which applies to foreign ships with Australian crews.
- Amend 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. 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 by themselves when lodging a tax return if they are an Australian taxpayer, so as to bypass any administration or involvement with the ATO by the foreign employer, as is the case in all other nations. This would provide a complimentary seafarer income tax structure for those not employed by Australian companies or on Australian registered ships (so Australian's are treated on an equivalent basis as their international counterparts, aimed at encouraging foreign ship owners and operators to employ Australian seafarers):
 - » It should be noted that the Australian labour costs of Australian deck officers and engineers are consistent with the labour costs for international deck officers and engineers in the international seafarer labour market given the shipping tax incentives offered by most foreign countries. However, due to Australian seafarer tax arrangements, Australian seafarers are disadvantaged in the global seafarer labour market by their home nation income tax requirements.

Appendix 1: The proposed Object clause for an amended CT Act

Amend s3(1) by repealing the current Object and replacing it with the following:

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

- (a) Maximises the use of ships registered in the Australian General Shipping Register in coastal trading; and
- (b) Facilitates the long-term growth of the Australian shipping industry; and
- (c) Enhances the utilisation, efficiency and reliability of Australian ships as part of the national transport and logistics system; and sea passenger transport system; and
- (d) Supports the development and maintenance of a national strategic fleet in the national interest; and
- (e) Promotes competition between Australian providers of coastal trading ships and fair competition with road and rail modes in domestic freight transport; and
- (f) Promotes a narrowing of the cost gap between Australian ships and international ships in coastal trade; and
- (g) Quarantines for GL ships, national interest trades, routes or market segments.

Appendix 2: The proposed functions for a new Australian Coastal Ship Licencing Authority (ACSLA)

(1) The functions of the Authority are:

- (a) To promote the Object of this Act;
- (b) To manage and supervise the Australian coastal ship licencing system;
- (c) To issue coastal ship licences;
- (d) To monitor the use of TL ships that supplement GL and MGL ships;
- (e) To manage a procurement process for supply of GL ships;
- (f) To secure additional market share for GL ships in coastal trade and to encourage the use of long-term contracts of affreightment (COAs) for freight transportation;
- (g) To declare national interest shipping trades, routes or market segments within defined supply chains;
- (h) To establish and facilitate dialogue between:
 - (i) agencies of Government that build, operate and maintain ships (or manage tenders for these functions), and regulate maritime matters, including Defence/Navy, Australian Border Force, CSIRO, marine management and mapping authorities and AMSA;
 - (ii) commercial shipping interests; and
 - (iii) seafarer representative organisations:
to maximize merchant civilian participation in provision of government ships, shipping services, support and maintenance, including the maintenance of a National Strategic Fleet;
- (i) To ensure that Australian ships are available to help deliver domestic fuel security for both civilian and Defence requirements;
- (j) To promote and advocate for fair competition and a level playing field between shipping, and road and rail modes, in domestic freight transport;
- (k) To ensure the ship licencing scheme, the visa arrangements for seafarers and the Customs Act are working in harmony;
- (l) To publish monthly statistics on coastal trade and coastal ship operations including licenses issued, based on specified data sets;
- (m) To report annually on the performance of its functions and the operation of this Act;
- (n) To perform such other functions as are conferred on it by or under any other Act or regulations; and
- (o) To perform functions incidental to any of the previously described functions.

Appendix 3: An outline of the proposed new temporary licence (TL) application process in the Coastal Trading (Revitalising Australian Shipping) Act 2012 (CT Act) for cargo ships

- The licensing process outlined below is based on the assumption that a shipper will have commenced discussions with a ship provider regarding the transportation of the shipper's cargo prior to the licence application process commencing.
- The formal process therefore commences with an application for a TL to the Australian Coastal Ship Licencing Authority (ACSLA [the Authority]) by a ship provider – either:
 - » A holder of a general licence (GL); or
 - » A holder of a modified general licence (MGL); or
 - » The owner, charterer or agent of a non-licenced ship (a foreign registered ship):
 - ▶ Note that under the proposed new provisions, unlike the current CT Act, neither the master of a ship, nor a shipper is eligible to apply for a TL.
 - ▶ Also note that under the proposed new provisions, the TL attaches to a ship and there must be a separate application for each ship for which a TL is being sought.
 - ▶ It is proposed that it be a requirement that the TL application specify what supply chain the cargo is a part of to enable the Authority to assess whether the TL is in a trade that is defined as a national interest trade.
- Upon receipt of an application for a TL the Authority must:
 - » First, determine that the application falls outside a national interest shipping trade, route or market segment and is not for a ship that is included as a National Strategic Fleet Ship;
 - » Second notify all GL and MGL holders of the application; and
 - » Third, invite GL and MGL holders to advise the Authority if they believe they have, or could, within a reasonable time to meet the shipper's transportation requirements, provide/secure a suitable and available GL or MGL ship (or ships) to meet the transportation requirements of the shipper.
- If the Authority is advised by one or more GL or MGL holders that it believes it has or could secure a suitable and available ship or ships to meet the shippers' requirements, the Authority must:
 - » Require each such GL and or MGL holder to enter into commercial discussions with the shipper of the cargo with an intent that the GL or MGL holder enter into a charter party agreement with the shipper; and
 - » Require each GL and or MGL holder, and the shipper, to each separately report on the outcome of those commercial discussions. The report must include:

- ▶ Advice on whether agreement for provision of one or more GL or MGL ships by a GL or MGL holder has been reached;
 - ▶ Advice on whether there is agreement to use a combination of GL/MGL and TL ships to meet the shipper's transportation requirements; and
 - ▶ In circumstances where no agreement is reached, the reasons for the failure to reach agreement.
- If the Authority is advised by GL and or MGL holders that no suitable GL or MGL ship is available or could be secured within a reasonable time to meet the shippers' transportation requirements the Authority may:
 - » Call tenders for the supply of one or more GL and or MGL ships where the Authority determines that the trade could commercially sustain a GL or MGL ship; and or
 - » Issue a TL to a ship or ships for the transportation of the shippers' cargo requirements, pending the outcome of the tender process.
 - ▶ Note that a TL has a maximum duration of 3 years.
- The Authority may require a GL and or MGL holder and a shipper to undertake a commercial arbitration process in circumstances where no agreement is reached on use of the GL/MGL holder's GL/MGL ship or ships, where the reasons for a failure to reach agreement indicate that commercial arbitration may provide assistance in reaching agreement.
 - If the Authority is advised by a GL and or MGL holder and the shipper that agreement has been reached to charter one or more GL and or MGL ships, the TL application is considered to have lapsed.
 - If the Authority is advised by a GL and or MGL holder and the shipper that agreement has been reached to charter one or more GL or MGL ships, to be supplemented by one or more TL ships, the Authority must proceed to grant one or more TLs.
 - If the Authority is advised that the GL and or MGL holder does not wish to offer a TL ship to the shipper where cargo volumes require ship capacity in excess of the capacity of the GL/MGL ship or ships, the shipper is authorised to seek to secure a TL ship from an owner, charterer or agent, who must then apply to the Authority for a TL for the ship.
 - If on completion of a tender process, a suitable GL or MGL ship becomes available to transport the shipper's cargo, the Authority must consult with the shipper, the owner/operator/charterer or agent of the GL or MGL ship and the charterer of the TL ship that is undertaking the shipper's transportation requirements, to arrange a transition from use of the TL ship to the GL or MGL ship, over a reasonable time period that does not prejudice commercial interests.
 - The Authority is authorised to consider and grant applications for a TL for a ship to transport small volume cargoes on an irregular basis and at short notice on the following conditions:
 - » The cargo comprises 6 or less TEUs;
 - » The cargo comprises no more than 2 vehicles or 2 items of machinery;

- » The cargo comprises break bulk cargo of no greater than 25 tonnes in total;
- » The cargo comprises no more than 5,000 litres of liquids;
- » The TL has a maximum duration of 14 days and cannot be extended; and
- » The Authority is not permitted to grant more than four such TLs to an applicant in any 12-month period.
- » The Authority shall monitor and keep under review the use of TL ships in each trade, along with trade volume trends, to ensure that TL ships are not accessing cargo volumes that could viably sustain the use of a GL or TGL ship, and to ensure that there is no gaming behavior regarding supply chains that are intended to be included in national interest shipping trades, routes or market segments that would undermine the Object of the Act:
 - » Where the Authority assesses that trade volumes in a trade or supply chain where cargo is contestable and could viably sustain one or more additional GL and or MGL ships, the Authority must take that assessment into account when considering new or renewed applications for a TL for a trade.
- » Price inquiries and or price surveillance of monopoly ship service providers - The Authority may at its sole discretion request the Minister to arrange under s95H of the *Competition and Consumer Act 2010*, for the Australian Competition and Consumer Commission (ACCC) or another body to hold an inquiry into the pricing practices of the holders of ship licences granted by the Authority and or to undertake price surveillance of licence holders under part VIIA of the *Competition and Consumer Act 2010*, where the license holder is the sole ship provider to the shipper.

