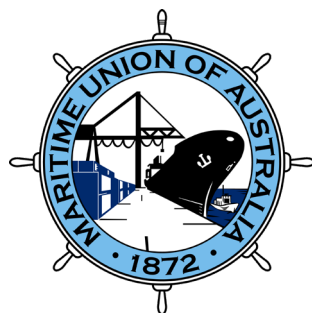




# Reform of the cruise shipping sector

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MUA Policy Briefing Paper



March 2021

## Introduction

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This cruise/passenger shipping sector is a significant contributor to the Australian and regional economies and is one of the major components of Australia's tourism, hospitality and entertainment industries. Prior to COVID-19 related border closures there were approximately 8,000 seafarers (marine and non-marine) sailing in Australian waters on cruise vessels at any given time, the overwhelming majority being foreign seafarers.

With the exception of stevedoring in Port Jackson NSW, the shoreside maritime operations supporting the cruise sector in Australia comprises around 1,000 low paid, casualised non-union jobs, performing high risk work.

From a regulatory perspective, cruise shipping is simply another aspect of coastal trading and is covered by the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act). However, by virtue of a Ministerial exemption issued under Section 11 of the CT Act, large cruise ships (over 5,000 gross tonnes and capable of carrying over 100 passengers) are exempt from the operation of the CT Act, at least until 31 December 2023, and have been exempt from the operation of the CT Act since it commenced in 2012 due to the self interest lobbying power of the large cruise sector.<sup>1</sup>

The effect of this exemption is that no Australian cruise ship owner/operator/charterer employing Australian crew and holding a General Licence could ever commercially succeed as a large cruise ship owner/operator/charterer as it would not be entitled to contest such a trade. The large cruise ship trade is virtually handed to foreign ship owners/operators/charterers on a platter – and no conditions or standards relating to time limitations, crewing qualifications/licencing, visa conditions etc apply to those foreign operators (except the usual ship standards applying to international ships operating in Australia).

Large cruise ships operating in and from Australia are therefore unregulated, unlike other coastal trading ships. This is having a detrimental impact on the Australian maritime sector, particularly on maritime employment and the small business sector that supports the trading ship sector. It is not in the national interest to continue with a deregulated cruise ship sector.

Furthermore it is discriminatory against the small cruise ship sector, predominantly comprising the expedition cruise sector, which is regulated, and under the current administration of the CT Act, is being undermined by foreign shipping companies who are issued Temporary Licenses (TLs) to operate in coastal trade (expedition cruising) at the expense of Australian small cruise operators.

The MUA is advocating a package of reforms to fairly regulate the cruise shipping sector.

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<sup>1</sup> The most recent exemption was issued by the Hon Michael McCormack MP, Minister for Infrastructure and Transport on 13 September 2018, and operates from 1 January 2019 to 31 December 2023. This exemption applies to vessels in excess of 5,000 gross tonnes which are:

- Capable of a speed of at least 15 knots;
- Capable of carrying at least 100 passengers; and
- Utilised wholly or primarily for the carriage of passengers between any ports in the Commonwealth or in the Territories, except between Victoria and Tasmania.

## **MUA proposals for reform of the cruise/passenger sector**

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In summary, the MUA proposes that regulation of the cruise passenger ship sector be reformed by:

- Repealing the Ministerial exemption from the operation of the CT Act that applies to large cruise ships, in order to provide the opportunity for Australian General Licence (GL) holders to contest for cruise/passenger shipping routes/itineraries;
- Creating a new Division in the CT Act for the issue of licences for large cruise ships to operate in Australia, so it operates independently of the cargo ship sector and becomes a market access licence, with special conditions to apply to licence holders in return for that market access; and
- Specifying that small (expedition) cruise ships be declared as a national interest shipping trade, route or market segment to be reserved for ships on the Australian General Shipping Register (AGSR) that are issued with a GL, designed to protect the expedition cruise sector from foreign competition. We argue that the uniquely Australian expedition cruise experience featuring Australian natural environments, regional foods and beverages, indigenous culture and history should only be delivered by cruise shipping operations with 100% Australian ownership and content. This is important for authenticity.

### **Creating a new Division in the CT Act for large cruise/passenger ships would:**

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- Provide a separate licence application process (separate from the licence application process for cargo ships) for issuing TLs for passenger ships, consistent with a revised Object clause and the proposed establishment of an Australian Coastal Ship Licencing Authority (as outlined in the companion policy paper on reform of coastal trading regulation):
  - » The key features of a TL licencing process for passenger ships are:
    - ▶ That (a) a holder of a GL, or a holder of a modified general licence (MGL)<sup>2</sup> (another MUA proposed CT Act reform) 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 redefined so that, inter alia, they do not include expedition cruise ships, irrespective of ship size or passenger numbers of an expedition cruise ship);
    - ▶ That an application for a TL for passenger ships may be for one or more specified ships i.e. it can be a for a cruise fleet by a single applicant;

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2. A MGL is a proposed Modified General Licence, being a licence granted to a foreign registered ship that employs Australian crew and

(i) Operates under a demise charter as defined by s9 of the Shipping Registration Act 1981 (SR Act) and is not registered on the Australian General Shipping Register (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 outside Australia.

- ▶ That the licencing Authority may 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:
  - The applicant must advise the Authority, no later than one year before expiry of the licence period, of any reason why it cannot transition at least one of its TL ships to a GL or MGL ship, on commencement of the next licencing period;
  - The operator maintaining their ship management operations in Australia;
  - The ship to which the license applies being home ported in Australia<sup>3</sup>;
  - 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;
  - A commitment to secure a single negotiated collective bargaining agreement (CBA) with Australian maritime unions under the auspices of the ITF for all marine crew on the ship, that is based on the ITF Total Crew Cost (TCC) Collective Agreement (but which could be any other approved ITF CBA);
  - A commitment to secure a single negotiated CBA with Australian maritime unions under the auspices of the ITF, for all non-marine crew on the ship;
  - A commitment that all contractors engaged for shore-based work supporting the ships of ships will be covered by a collective agreement with the MUA;
  - A commitment to conform with the Work Health and Safety Act of the state/ NT where the ship is homeported, including compliance with infectious disease health advice provided by the Chief Health Officer and or Chief Biosecurity Officer appointed under the *Biosecurity Act 2015* (Cth) and the MUA best practice pratique and ship berthing requirements issued by the harbourmaster for the homeport; and
  - The non-national crew hold a Maritime Crew Visa (as reformed in accordance with MUA policy – see the MUA companion policy paper on reform of the MCV).
- Other reforms being proposed are 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.
  - ▶ Foreign ships authorised to undertake voyages under a TL should not be allowed to deviate from published routes/itineraries.

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<sup>3</sup>. Prior to the COVID-19 pandemic there were up to 16 vessels that were home-ported in Australian ports for all or part of the year

## **The benefits for large cruise ship operators**

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The benefits that would flow to the large cruise ship operator issued with such a licence are:

- The right to embark and disembark passengers at more than one Australian port.
- Access to some of the shipping taxation incentives.
- Access to Australian ship maintenance, repair and dry-docking facilities for up to 60 days without the ship being declared “imported” by the Australian Border Force, thus avoiding the need for genuine work visas for crew at the expiry of 5 days, which is the limitation surrounding the conditions of the current Maritime Crew Visa (MCV) held by crew on cruise ships temporarily entering Australia (though Australian Customs and Border Protection Notice No. 2014/61 (International Ships Undertaking Maintenance and Repair — Interim Process), provides for ships to be able to undertake repairs and maintenance during a (current) 30 day window during which time the crew may remain on a MCV and not be required to apply for a Temporary Work (Short Stay Activity) visa (subclass 400)), which the MUA argues should be the modified MCV it proposes.
- Provision for fleet wide licenses for cruise ships under a reformed CT Act, with longer duration licences than the current 12-month licences (up to 3 years).

Under the MUA proposal, an unlicensed foreign registered large cruise/passenger ship will be permitted to dock, but will not be permitted to embark or disembark passengers at more than one Australian port, i.e. its access to the Australian cruise passenger and tourism market is limited. Furthermore, the crew on an unlicensed ship would only be entitled to an MCV so if the ship needed to break its international voyage for repairs or maintenance, its crew would not be entitled to take advantage of the s112 provision in the CT Act that disapply the Customs Act and therefore allow its crew on MCVs to be in Australia for longer than 5 days in circumstances, where, due to the breaking of the international voyage, the ship is declared by ABF (Customs) to be imported and entered for home consumption, thereby invoking the five day limit for crew on an MCV to remain in Australia.

The MUA proposed reform of the maritime crew visa system, requiring consequential reform of the Customs Act and CT Act is detailed in the MUAs companion shipping policy paper entitled *Reform of the Subclass 988 Maritime Crew Visa (MCV) system*.

## **The benefits for small cruise ship operators**

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The benefit for small cruise ship operators, predominantly expedition cruise ship operators, is that the sector would be reserved for Australian ships employing Australian crew. Foreign operators utilising foreign ships employing foreign crews would be prohibited from operating in the expedition cruise sector.

The only conditionality we propose for ships in the small cruise sector is that they default to coverage under the *Navigation Act 2012* and be crewed by seafarers holding vocational qualifications and occupational licenses specified in Marine Orders 70 to 73. We regard this as an important safety measure.

## **The MUA proposal for establishment of state-based Cruise Shipping Commissions**

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Arising from experience during the COVID-19 pandemic and in particular the circumstances surrounding the *Ruby Princess* cruise ship, the MUA is also advocating the establishment of a Cruise Shipping Commission in each state/NT.

The objective is to ensure that states/NT maximise the economic and social benefits from cruise shipping and have in place better mechanisms to manage the risks, be they biosecurity, work health and safety, labour standards or ship safety and navigation. It is important to ensure that cruise shipping can sustain its social licence to operate following the COVID-19 pandemic, that has had a major impact on the sector.

An important feature of the Commission as we propose is that it be responsible for ensuring there is an appropriate interface and clearly defined responsibilities and procedures within and between the many agencies that have oversight of Australian laws impacting on international cruise shipping.

Such a Commission would also provide for the cruise line companies, and their representatives, like the Cruise Lines International Association (CLIA) and their port agents, and the workforce, represented by their labour unions, to partner with government in ensuring the industry can rebuild brands and consumer confidence and adopt better corporate governance, public health, work health and safety and labour practices that will deliver a better and safer cruise experience for both passengers and crew, and mitigate any risks to state/NT government support for the sector.

As we envisage, the Commission would be responsible for overseeing the coordination and efficient operation and interaction of each of the state/NT agencies and its stakeholders that interface with cruise shipping in Australia, covering:

- Government support for the future development and growth of a safe and prosperous international cruise ship industry that uses state/NT ports and contributes to the economy;
- Public health standards for passengers, ships' crew, the shoreside workforce that interface with cruise ships and the wider community;
- Ship safety, including biosecurity (including ship pollution derived from International Maritime Organisation (IMO) Conventions); and human biosecurity and the interaction between marine laws and biosecurity laws;
- Work health and safety (WHS) and welfare of ships' crew and port workers (derived from International Labour Organisation (ILO) Conventions) and including the interface with public health and human biosecurity laws and procedures;
- Labour standards and modern slavery (derived from the ILO Core Labour Conventions, the Maritime Labour Convention in particular, and modern slavery legislation);
- Seafarer rights including representational and ship and workforce access rights (derived from ILO and IMO Conventions);
- Ship crew change processes and procedures in accordance with IMO and ILO protocols;
- Border security, customs, immigration, taxation and crimes at sea;

- The interface with domestic shipping and ports, and service providers (including port agents) to cruise ships in state/NT waters; and
- Training and instruction of public agency officials and cruise industry staff that are responsible for administering laws and procedures covering ships.

A core function of the Commission would be to develop and promulgate Codes of Conduct on the advice of relevant stakeholders. The Codes of Conduct would be designed to establish principles and mechanisms for addressing the full spectrum of labour, WHS and biosecurity protocols as well as agency coordination and compliance and enforcement arrangements, and in particular:

- A consistent approach to the health protections and protocols for workers in essential maritime services such as ports and port services, and ships, based on the best available advice from the ILO, IMO and World Health Organisation (WHO), supported by Australian experience gained during the COVID-19 pandemic.
- A consistent approach to ship operator responsibilities in the event that one or more workers in a port or shipping workplace contracts a communicable disease, that address worker health and safety (e.g. procedures for shift and crew changes) and equipment/workplace clean-ups and safety to ensure that maritime workplaces are safe for remaining and replacement workers.
- An approach to ensure compliance with the labour standards applying on international cruise ships and for ensuring the crew have appropriate access to advice on their labour rights and entitlements and to representation by their labour unions.

It is our view that the Commission be a tripartite body that is coordinated by state/NT transport agencies and include representatives from key government agencies like Health, the Port Authority, Work Health and Safety agencies, the cruise industry and maritime labour unions, including the International Transport Workers Federation (ITF). Given the large number of agencies with a direct interest, it may be appropriate that the Commission be advised by an industry reference group comprising representatives of all government agencies, including Commonwealth agencies like the Australian Maritime Safety Authority (AMSA) and the Commonwealth Departments of Health, Home Affairs (Australian Border Force) and Agriculture, Water and the Environment.

## **What constitutes cruise shipping in the Australian context?**

There are essentially two principal components to cruise shipping in Australia, each with subsections:

- Cabotage - Cruise ships engaged in coastal trading, of which there are two subsectors:
  - ▶ The Australian domestic expedition cruise shipping sector, comprising companies that use Australian registered ships (on the AGSR) and others that include in their fleets foreign ships with foreign crews; and

- ▶ International cruise shipping, where the cruise itinerary may originate and conclude in an Australian port and which incorporates two or more domestic ports visits in more than one state (which is cabotage if passengers can embark and disembark from/at those Australian ports, and if the passengers do not hold a through ticket to or from a port outside Australia<sup>4</sup>) but which also invariably includes international destinations in a single itinerary; and
- Non cabotage - Cruise ships engaged solely in international cruise itineraries which commence and terminate in an Australian port. This includes two subsectors:
  - ▶ Australian cruise line companies that offer itineraries to international destinations but which commence and depart in an Australian port; and
  - ▶ International cruise line companies that offer itineraries to international destinations, which commence and terminate in an Australian port.

## What is homeporting?

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International cruise ship operators, in both cabotage and non cabotage segments, may decide to “homeport” a ship in an Australian port.

The concept of homeport for a ship is given legal meaning in Australia only in the *Shipping Registration Act 1981* (Cth), and it only applies in relation to an Australian registered ship. It is the port in which the ship is registered (see s80 and 83). The home port of a ship means the port that is entered in the General Register or International Register as the home port of the ship. The Shipping Registration Regulations 2019 provides a process for shipowners to specify and change the home port of a ship, and for a Gazette notice process by the CEO of AMSA to notify specified home ports. Current Gazetted home ports are:

- NSW: Sydney, Newcastle, Port Kembla, Yamba, Jervis Bay, Lake Macquarie, Port Stephens.
- VIC: Melbourne, Geelong, Portland.
- QLD: Abell Point, Brisbane, Bundaberg, Cairns, Gladstone, Hamilton Is., Hayman Is., Karumba, Mackay, Maryborough, Mooloolaba, Mourilyan, Port Douglas, Rockhampton, Southport, Townsville. Rosslyn Bay.
- SA: Port Adelaide, Kingston, Goolwa, Wallaroo. Port Lincoln.
- WA: Broome, Fremantle, Dampier, Port Hedland.
- TAS: Hobart, Burnie, Devonport, Launceston.
- NT: Darwin, Gove Harbour.

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<sup>4</sup> This derives from the definition of coastal trading in s7 of the CT Act, which specifies that a vessel is involved in coastal trading if it:

- (i) takes on board passengers at a port in a State or Territory; and
- (ii) carries the passengers to a port in another State or Territory where some or all of the passengers disembark; or
- (iii) takes on board passengers at a port in a State or Territory; and
- (iv) carries the passengers to a port in the same State or Territory where some passengers disembark; and
- (v) carries passengers to a port in another State or Territory where some or all of the passengers disembark; or
- (vi) takes on board passengers at a port in a State or Territory; and
- (vii) carries the passengers to a port in the same State or Territory where some or all of the passengers disembark.

This does not apply if a passenger:

- (i) holds a through ticket to or from a port outside Australia; and
- (ii) disembarks at a port in Australia for transit purposes only.



Homeporting in the cruise context is generally a marketing concept, at least in relation to foreign registered cruise ships, promoted by the state and NT governments that incentivise shipowners/operators/charterers to use a particular state or NT port as the primary embarkation and disembarkation port for the cruise itinerary because that brings economic advantage to the particular state/NT.

Homeport for a seafarer on the other hand, has legal meaning – see s14 of the Navigation Act 2012. The home port of a seafarer means: (a) the port specified in the seafarer’s employment agreement (SEA) as the home port of the seafarer; or (b) if there is no home port of the seafarer specified in an employment agreement—the port at which the seafarer embarked their ship.

## **What has been happening regarding licencing in the smaller (under 5,000 GT) cruise sector (principally the expedition cruise sector, some of which utilise superyachts)?**

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Since 2012, the TL system has been used to a limited extent in the smaller cruise/passenger sector (where the exemption does not apply). TL data reveals that over the period 1 July 2012 to 20 December 2020:

- 51 voyage authorisations under Temporary Licenses have been issued:
- This involved 5 separate TLs, granted to the following TL holders:
  - ▶ Harvey Bay Pty Ltd (15 voyages).
  - ▶ Inchcape Shipping Services (2 voyages).
  - ▶ Australia Pacific Touring (APT) (30 voyages).
  - ▶ Carter Marine Agencies Pty Ltd (2 voyages).
  - ▶ Sunion Pty Ltd (2 voyages):
    - Most were expedition cruises.

No data is readily available on the number of those TL applications that have been contested by a GL holder.

## **Superyachts/special recreational vessels**

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On 12 December 2019, the *Special Recreational Vessels Act 2019* (SRV Act) commenced. This Act establishes a means by which special recreational vessels (SRVs) can opt in to the coastal trading regulatory scheme established by the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act). The SRV Act does this by:

- Permitting applications for temporary licences authorising SRVs to carry passengers in Australia to be made under the SRV Act, but treated as if they were applications under the CT Act; and
- Permitting applications by owners of special recreational vessels for declarations that the CT Act applies in relation to intrastate voyages undertaken by such vessels.

A special recreational vessel means a vessel that:

- Is designed to be used wholly or primarily for recreational or sporting activities; and
- Is over 24 metres in length; and
- Is not used wholly or primarily for carrying cargo.

The SRV Act provides for the owner, charterer, master or agent of an SRV to apply to the Minister for an SRV TL to engage in coastal trading. The conditions associated with an SRV TL are:

- The SRV TL can apply for a maximum of 12 months;
- The number of passengers on each authorised voyage must not exceed 12.

The Act contains a sunset clause and is repealed immediately after the end of 30 June 2021.

On 23 December 2019, the ABF issued Australian Customs Notice No. 2019/46 which clarifies that vessels that enter and operate in Australia in accordance with the SRV Act will be considered international commercial vessels rather than recreational vessels and that the SRV Act does not change existing reporting and permissions for international commercial vessels operating in Australian waters under the coastal trading licence scheme.

This means that for SRV crew, in addition to the Temporary Activity visa (subclass 408 visa), they may be eligible to apply for the Maritime Crew Visa (subclass 988 visa).

An SRV may remain covered by the exemption from importation requirements under the Customs Act, as provided under section 112 of the CT Act, while it undertakes commercial activities consistent with a licenced voyage. This may include, for example for resupplying, refuelling and repositioning.

Once a special recreational vessel ceases commercial activities consistent with a licenced voyage, its Customs (importation) status will depend on the vessel's subsequent activities. The ABF will assess the actual and intended circumstances of the vessel to determine if there is the requisite intention to import it. The subsequent treatment options may include:

- Completing an import entry and remaining in Australian waters.
- Departing Australian waters and travelling to a place overseas.
- Being assessed for eligibility, by an ABF officer, for a Conditioned Control Permit (CCP) that would allow the vessel to remain in Australian waters:
  - ▶ If granted a CCP, the reporting requirements, including permission to visit a place other than a proclaimed port, remain as outlined in the Australian Customs Notice; and
  - ▶ The CCP is conditional on the vessel not undertaking any commercial activities.

Vessels that obtain a coastal trading licence through the SRV Act may undertake maintenance and repair while in Australia. This is conditional on the vessel meeting the requirements as set out in Australian Customs Notice 2014/61:

- All relevant circumstances, including consideration of a reasonable amount of time to undertake repair of the kind the vessel is undergoing as well as whether there is any change in circumstances, such as ownership of the vessel, will be used to determine whether entry is appropriate in the situation.
- Imported replacement parts for repair of a vessel operating on a Conditioned Control Permit must be entered for home consumption with duty and GST paid before delivery to the vessel.

Vessels operating under an SRV TL must conform with ATO requirements regarding income tax, employee withholding tax, goods and services tax, and fuel tax credits.