

Coastal Trading Green Paper

A Maritime Transition

Preamble

The need for certainty and stability of coastal trading policy settings has been the catalyst for an all-inclusive series of industry meetings. From February – April 2016 a series of meetings were held to discuss the coastal trading issues affecting specific sectors within the Australian coastal trading sector. Those meetings were as follows (a list of participants is contained at Annex A):

15 February	Container
15 February	Ro-Ro, Heavy Lift, Break Bulk
16 February	Bass Strait (non-bulk)
10 March	Regional services
21 March	Dry Bulk
22 March	Liquid & Gas Bulk
19 April	Cruise / tourism

These meetings have taken place in the context of a desire for change expressed by a range of stakeholders: providers of shipping services, both Australian and foreign; users of shipping services; maritime workers; the major political parties; and a number of independent Senators and MPs.

This paper has been prepared by Teresa Lloyd¹ acting in the capacity of convener of those meetings and is not intended to be a record or minutes of the meetings. Rather the paper contains the major elements, ideas and concepts that arose from those meetings that the author considers would form the basis of a holistic policy proposal. Broad political support is required on this issue if any policy is to be successful and the proposal contained herein is intended to meet that objective.

A draft of this paper has been shared with the participants from all the sector specific meetings except the expedition cruise sector, to test the integrity of the paper as a reflection of the discussions that were held. Participants were not asked to agree to or support the paper. All but two participants (noted via * in the list at the Annex A) confirmed that the discussions they participated in were reflected in the paper. The paper does not make any proposal that arose from the meeting involving the expedition cruise sector and for that reason the paper has not been previously circulated to participants at that meeting.

Executive Summary

The proposition outlined in this paper provides the following:

- Removes the regulatory burden involved in obtaining temporary coastal trading licenses.
- Retains the structure for differential treatment of GL, TGL and TL vessels.
- Introduces the potential for increased Australian content across the broadest possible maritime activity areas in Australia.
- Levels the playing field for Australian-based ship operators vs foreign-based ship operators.
- Removes the Fair Work Act Part B requirement as a payment to foreign seafarers and proposes an alternative that provides far greater benefits to Australia.
- Contemplates the concept of a 'Strategic Fleet' – vessels that offer strategic national interest benefits to the nation.
- Calls for the development of infrastructure needed to encourage the establishment of dedicated coastal ro-ro services for containerised cargo/trucks.
- Recognises large cruise ship operations as being suitable for continued exemption from coastal trading provisions.
- Isolates the port-to-port pairing aspect of coastal trading regulation as being a feature that does not work for all sectors or in all instances.
- Identifies the expedition cruise ship sector as requiring further work to determine appropriate settings.

¹ This paper is not necessarily the view of Maritime Industry Australia Ltd (MIAL), of which Ms Lloyd is the CEO.

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Introduction

The discussions identified that a clear vision is necessary to create a stable and sustainable policy. That vision should tackle the core questions:

1. What maritime capability does the country need?
2. How will it be provided?
3. Who is going to pay for it?

In addition the discussions identified six key pillars to underpin the next wave of shipping policy for Australia:

- Legislative and policy certainty.
- Streamlined, simplified and more flexible regulation to suit the different sectors.
- Competitive taxation settings for Australian businesses involved in shipping i.e. competitive with international shipping.
- Competitive and comparable fiscal settings for Australian businesses involved in shipping vs domestic road and rail.
- Incentives for Australian operators through extended differential pricing from port and regulatory agencies and from supply chain service providers.
- A reduction in operating costs – to narrow the gap between international ships and Australian ships - including reducing labour costs.

Overview

Without going too far down the path of answering the first of these questions (what maritime capability does the country need) it is possible to describe a regime that: supports Australian businesses involved in providing shipping services; provides users of shipping services with the service they need at a rate they can afford; provides work for a strategic group of Australian maritime workers; allows Australia to capitalise on the natural advantages it has to be a strong maritime nation with resultant benefits to the nation (economic and social).

A very brief summary of a potential regime:

- Retains the structure of GL, TGL and TL.
- Adjust the settings around the AISR to provide a platform whereby AISR ships are competitive with foreign ships. This would have the effect of increasing the AISR share of activity on the coast, which is currently almost exclusively foreign, thereby increasing the Australian content overall. This requires a range of changes to policy and taxation settings (see separate section for details).
- Preserve the National highway (Bass Strait crossings) for Australian operators (where the TFES is already in place)
- Reserve essential services (i.e. Northern Australia to the communities in Torres Strait and across the top end) for Australian operators
- Create a TL+ category within the coastal trading structure which would be available to businesses that met Australian content requirements within their businesses. A TL+ would have preference over a TL to encourage a greater level of Australian content across a broader range of shipping operations.

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- Create a 'Strategic Fleet' which would be defined as vessels that offer strategic national interest benefits to the nation. This fleet would be fully Australian and when operating in commercial activities (i.e. not chartered to Government operations), the additional cost (above foreign ship costs) would be offset by external funds.
- Redirect the funds raised via the application of the Seagoing Industry Award Part B (and simplify the administration and process of raising said funds) to a Strategic Maritime Development Fund (SMDF).
- Use the SMDF funds to, amongst other things, act partly as the external funds required by the Strategic Fleet.
- Develop infrastructure needed to encourage the establishment of dedicated coastal ro-ro services for containerised cargo/trucks.

This can all happen within the 'structure' of the existing Coastal Trading Act. Retaining this structure has several benefits:

- The national highway concept is already covered via the TFES for Bass Strait.
- With minor amendment the essential services concept can be readily covered with minor changes (to ensure that the entire network of voyages is covered not just port to port).
- The strategic fleet would be defined in the same way a GL ship is currently defined.
- Existing GL operations are effectively grandfathered.
- Existing Transitional General Licenses are effectively grandfathered / supported for the life of the License.
- New/changed operations can take advantage of the lower operating costs for AISR via TL.

Structure changes

Importantly however, in retaining the current structure, is the need to radically improve, streamline and expedite the processes involved. A flow chart outlining a revised process is attached Annex B. While the flowchart looks like a complicated process, in fact it shows that the vast majority of TL applications would be granted immediately.

Further there are four clear scenarios / trades where the port to port pairing structure within the coastal trading regime doesn't work. They are:

1. Expedition cruising where a TL operator could, for example, run the same itinerary in reverse to a GL itinerary, or shadow a GL itinerary by a week, and avoid any 'contestability' challenge yet offer the same experience/service.
2. Bass Strait general cargo, where shipping out of Bell Bay would circumvent any GL challenge.
3. Northern Australia essential services where the network of voyages is what allows the business to service what would otherwise be unprofitable routes to remote communities. Allowing a TL to undertake a single leg of the network of voyage places the entire operation at risk.
4. Cargoes that are moved in 'parcels' (i.e. multiple loads on same ship at same time) where the contest from a GL for one parcel would render the entire voyage non-economic.

Cruise shipping

There is a clear distinction within the cruise industry between the operators of large ships and the expedition cruise market. The large ship sector is currently exempt from the coastal trading provisions and it is suggested that this remain the case.

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A determination needs to be made regarding the appropriate settings for the expedition cruise sector. The structure and features of this sector are far more akin to land-based tourism than 'shipping' and as such it seems that a determination needs to be made regarding the appropriateness of expedition cruising being included within the jurisdiction of coastal trading (economic regulation) at all.

A sharing of the costs for maintaining a level of Australian content

The sector meeting participants concluded that if an Australian Government (of any political persuasion) wants to adopt a policy position of retaining a level of Australian content in coastal shipping, i.e. a strategic fleet, then the cost of that policy should not be borne solely by the shippers (cargo interests) who may be, under current regulatory settings, required to use an Australian ship under a contestability process.

The principle that flows from this position is that the Government, the ship service providers, the cargo interests and the workforce all need to contribute to the cost and success of the policy.

The Government's role

Government in particular has an important role because it is the custodian of the national interest. Government can contribute through taxation and industry policy support and by providing a facilitative regulatory framework that incentivises private sector investment in ships and shipping infrastructure.

- Provide a regulatory framework that facilitates this approach.
- Provide a fiscal environment that supports this approach, including incentives that acknowledge the subsidisation of road and rail modes and which incorporate the idea of the blue highway. This policy approach is designed to provide equity with land transport funding.
- Extend existing differential pricing from port and regulatory agencies and from supply chain service providers that incentivises Australian ships.
- Plan for and help fund port infrastructure such as for Ro-Ro ships, and dedicated terminals for coastal container ships.
- Identify ship types that would constitute national interest capability and form the Strategic Fleet.

The industry's role

Importantly the sector participants came up with a novel idea by which the industry could also contribute towards the cost of the policy. The industry proposal is that rather than the foreign seafarer being paid a margin over and above the typical ITF Agreement rates that they would normally be receiving on an international ship in the form of Award Part B entitlements while on a TL voyage, that the seafarer no longer be the recipient of that payment but rather, the approximate equivalent amount be paid into a dedicated Strategic Maritime Development Fund (SMDF).

Issues associated with the administrative burden in determining the amount paid etc as applies in the application of the Award need to be overcome. It is envisaged that payments would be a pre-determined lump sum and would be exercised under the different legislative powers (i.e. not FWA). The fairest mechanism to levy this fee needs to be determined (i.e. per day, per GRT of cargo carried, etc).

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Initial calculations reveal that the annual contribution available to the proposed SMDF through the proposed FWA substitution arrangement could be of the order of \$10Million per annum. This makes the fund capable of making a significant contribution towards the cost of a strategic fleet, as well as contributing to the cost of seafarer training and for foreign seafarer welfare programs.

Further, some industry participants thought that the application of such a fee ought to be applied from the very first coastal voyage to remove the current loophole that sees some trades filled largely by ships that only do one or two voyages, thus avoiding the payment.

Under this proposal:

- The industry (foreign ship owner and /or cargo interest) saves money by eliminating the back-end administration of FWA obligations.
- The cargo interest using a strategic fleet ship would continue to pay the price of the foreign ship (lower freight rate) but it would be using an Australian ship e.g. a ship crewed by Australian seafarers.
- Defence / Border Protection forces would have access to modern high quality merchant trading ships of suitable types to be useful/valuable to Australia for foreign aid, humanitarian, natural disaster, border protection and military purposes.
- A critical mass of ships would be available to underpin maintenance of a maritime skills base.

The workforce's role

The participating maritime unions, indicated that they are open to discussions around a labour relations approach that directly impacts on labour costs and productivity and helps to reduce the cost differential between Australian ships and foreign ships, with particular application to the strategic fleet.

Increasing the participation of shipping overall

The case for modal support for all forms of surface transport was a reoccurring theme.

In 2013/14 the public funding (from all Governments) provided to road and rail was:

- ~\$25 Bn (Commonwealth, State/Territory and Local) for road; and
- ~\$8.3 Bn (Commonwealth and State/Territory) for rail. ²

Further, it is estimated that each one per cent increase in freight efficiency saves the national economy \$1.5 billion.³ There is little doubt that with the right policy settings shipping could deliver at least a 1% efficiency gain.

A fraction of the expenditure provided to road and rail would greatly enhance the competitiveness of shipping vs those modes and increase the market share of this form of transport, with resultant economic and environmental benefits. Specifically, public investment in the infrastructure to encourage dedicated coastal ro-ro services for containerised cargo and trucks was identified as being something that would likely have immediate impact and provide confidence to investors to provide that transport option.

² ABS (2015 c,e & h), BITRE estimates

³ NSW FREIGHT AND PORTS STRATEGY, November 2013

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Increasing the level of Australian content in shipping

TL+ concept

Increasing the levels of Australian content in shipping can be achieved without necessarily requiring the flag of the vessel to be Australian or the entire crew to be Australian. The concept of a TL+ was raised. A TL+ is described as where an operator meets a certain Australian content requirement. Such minimum content could be defined as employment of Australians across the companies worldwide fleet (x% of their crew) and/or based on the existing tests to access the shipping tax regime which requires some of the following to be conducted from Australia: strategic management; commercial management; technical management; crew management. An operator with an AISR ship would qualify for a TL+. As a result of holding a TL+ the operator is afforded preference over other foreign operators operating on a TL, thus encouraging a broader range of operators to include Australian expertise in their businesses.

The Strategic Fleet

The types of vessels that Australia may determine have a national interest would need to be carefully considered given the particular requirements of Australia. Annex C contains some information on the regimes adopted by the United Kingdom via the Royal Fleet Auxiliary and United States of America via the Military Sealift Command. These are included to give an insight into the utilisation of merchant marine capability by other nations defence forces. Both of these nations also have significant nationally flagged fleet that could be requisitioned if required.

The circumstances of Australia are of course quite different and could mean that an appropriate strategic fleet for Australia is not as heavily influenced by the military and defence needs of the nation and may be more aligned with supply chain security and trade facilitation given our reliance on sea transport. An appropriate test to apply at first instance when determining what a Strategic Fleet ship might be could be to identify where there is sufficient cargo to warrant a stable and permanent presence.

The changes needed

The following legislative reform and supportive industry policy opportunities would be required to give effect to the above.

Coastal Trading Act

- Clarify the Object to eliminate ambiguity. A reformed Object might be to:
 - Require or support maintenance of a strategic fleet in the national interest i.e. maintenance of a level of Australian content, and define what that fleet might comprise.
 - Enhance the efficiency and reliability of Australian shipping as part of the national transport system.
 - Promote competition between Australian providers of coastal ships and fair competition with road and rail modes in domestic freight transport.
 - Promote a narrowing of the cost gap between Australian ships and international ships in coastal trade.
 - Quarantine national interest trades, routes or market segments.
- Introduce the TL+

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- Streamline the licence application process (see flow chart at Annex B) including removing the restrictions on some temporary licenses and the voyages undertaken therein.
- Contestability:
 - Overhaul the contestability provisions to minimise transaction costs i.e. remove red tape, to acknowledge shipping industry commercial imperatives;
 - Provide clear direction regarding factors to be considered – current uncertainties due to lack of clearly defined parameters that must be considered.
 - The concept of a professional independent arbitrator seems a step in the right direction but would need the addition of commercial industry expertise.
 - Development of an “Index + reasonable % for Australian content” was considered achievable. This would assist with consideration of price differentials.
- Separate out national highway and essential service operations.
- Minimise the scope of decision making by the Delegate by introduction of commercial principles where possible, including a maritime arbitration facility to resolve commercial disputes and ACCC oversight to monitor pricing in monopoly trades.

Shipping Registration Act

- Remove time off the coast requirement for AISR ships entirely.
- Minimum Australian crew component to be required rather than designated roles.
- Broaden the types of vessels eligible – change international trading to something describing “international maritime activities” so that offshore vessels can be registered on it.
- Fix ambiguity regarding *Fair Work Act* implications when under a temporary licence and not covered by Part B (i.e. first two voyages) – Fair Work Act is dis-applied when engaged in international trading, meaning that at all other times the Fair Work Act applies (s61AA(a) of the *Shipping Registration Act 1981*).
- Implement improvements in the process of obtaining certificates of equivalence for seafarers.
- Implement improvements (difficulty and expense) in the survey requirements for re-flagging in Australia.

Fiscal measures

- Introduce deemed franking credits in respect of dividends to resident shareholders.
- Introduce dividend withholding tax exemption in respect of dividends to non-resident shareholders.
- Provide for the Seafarer Tax Offset to be available to Australian crew even if not working internationally in order that the operating cost of the ship can be reduced (i.e. cost saving vests with employer) thereby increasing the competitiveness of a ship employing Australian workers.
- Provide complementary seafarer income tax structure for those not employed by Australian companies or on Australian flagged ships (so Australian’s are treated on an equivalent basis as their international counterparts) – see Annex D for detail.
- Extend application of taxation structure to broader shipping industry including the offshore sector.
- Provide fiscal incentives that acknowledge the subsidisation of road and rail modes and which incorporate the idea of the blue highway.

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Customs Act

- Provide for circumstances whereby importation is not in the 'national interest' (e.g. ship used as temporary storage facility)
- Introduce a timeframe during which vessels in Australia will not be deemed imported (e.g. 90 days)
- Exempt vessels using Australian dry-dock facilities from importation.

Improve the ship/port interface for Australian ships

- Provide discounts / exemptions to Australian ships for port and regulatory fees.
- Invest in dedicated coastal ship terminals as critical infrastructure.
- Ensure port planning processes provide priority access to ports and berths for Australian ships and shoreside facilities for their cargo.

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Annex A – List of sector specific meeting participants

Containers (15 February, Melbourne)

Sen J. Lambie
Teresa Lloyd (Convener)
Chris Schultz (ANL)
Sandy Galbraith (Maritime Trade Intelligence)
Dan Pearson & Jarrod Moran (AMOU)
Mick Doleman & Rod Pickett (MUA)

Ro-Ro, Heavy Lift, Break Bulk (15 February, Melbourne)

Sen J. Lambie
Teresa Lloyd (Convener)
Corey White (K Line)
Melanie McDonald (WWL)
Dan Pearson & Jarrod Moran (AMOU)
Mick Doleman & Rod Pickett (MUA)

Bass Strait (non-Bulk) (16 February, Melbourne)

Sen J. Lambie
Matthew Midson (Senator Muir's Office)
Teresa Lloyd (Convener)
Chris Schultz (ANL)
Dale Emmerton & Jacqui Jennings (Searoad Shipping)
Peter Stokes (Toll Shipping)
Malcom Merrey (TT Line)
Dan Pearson & Jarrod Moran (AMOU)
Mick Doleman & Rod Pickett (MUA)

Regional Services (10 March, Cairns)

Sen J. Lambie
Sen G. Lazarus
Tess Sanders Lazarus (Sen. Lazarus office)
Steven Sanders (Sen. Lazarus office)
Teresa Lloyd (Convener)
Dan Pearson & Jarrod Moran (AMOU)
Mick Doleman (MUA)
Ian Redfern (ANL)
Fred White, Lino Bruno, Bob O'Halloran (SeaSwift)
Terry Dodd (Pacific Marine Group)
Apology: Rod Pickett (MUA)

Dry Bulk (21 March 2016, Melbourne)

Sen J. Lambie
Teresa Lloyd (Convener)
Dan Pearson & Jarrod Moran (AMOU)
Mick Doleman & Rod Pickett (MUA)
Cliff Pearce (Rio Tinto)
Martin Gleeson (Incitec Pivot Ltd)
Matt Sanderson (P&O Maritime Services)

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Emily Pointon (CSL Australia)
Sandy Galbraith (Maritime Trade Intelligence)
John Francis (Ocean Freight Management)
Steve Randal (Strategic Marine Group)
Miles Prosser (Australian Aluminium Council)*
Margie Thomson (Cement Industry Federation)*

Liquid & Gas Bulk (22 March 2016, Melbourne)

Sen J. Lambie
Teresa Lloyd (Convener)
Dan Pearson & Jarrod Moran (AMOU)
Mick Doleman & Rod Pickett (MUA)
Cliff Pearce (Rio Tinto)
Adam Kuner (Odfjell Australia)
Conrad Saldanha (Origin Energy)
Hiti Kakani (Incitec Pivot Ltd)
Bryan Warburton (Viva Energy)
David Parmeter (Teekay Australia)
Stan Sismanis (Stolt-Nielsen Aust)
Steve Randal (Strategic Marine Group)

Cruise & Tourism (22 March 2016, Fremantle)

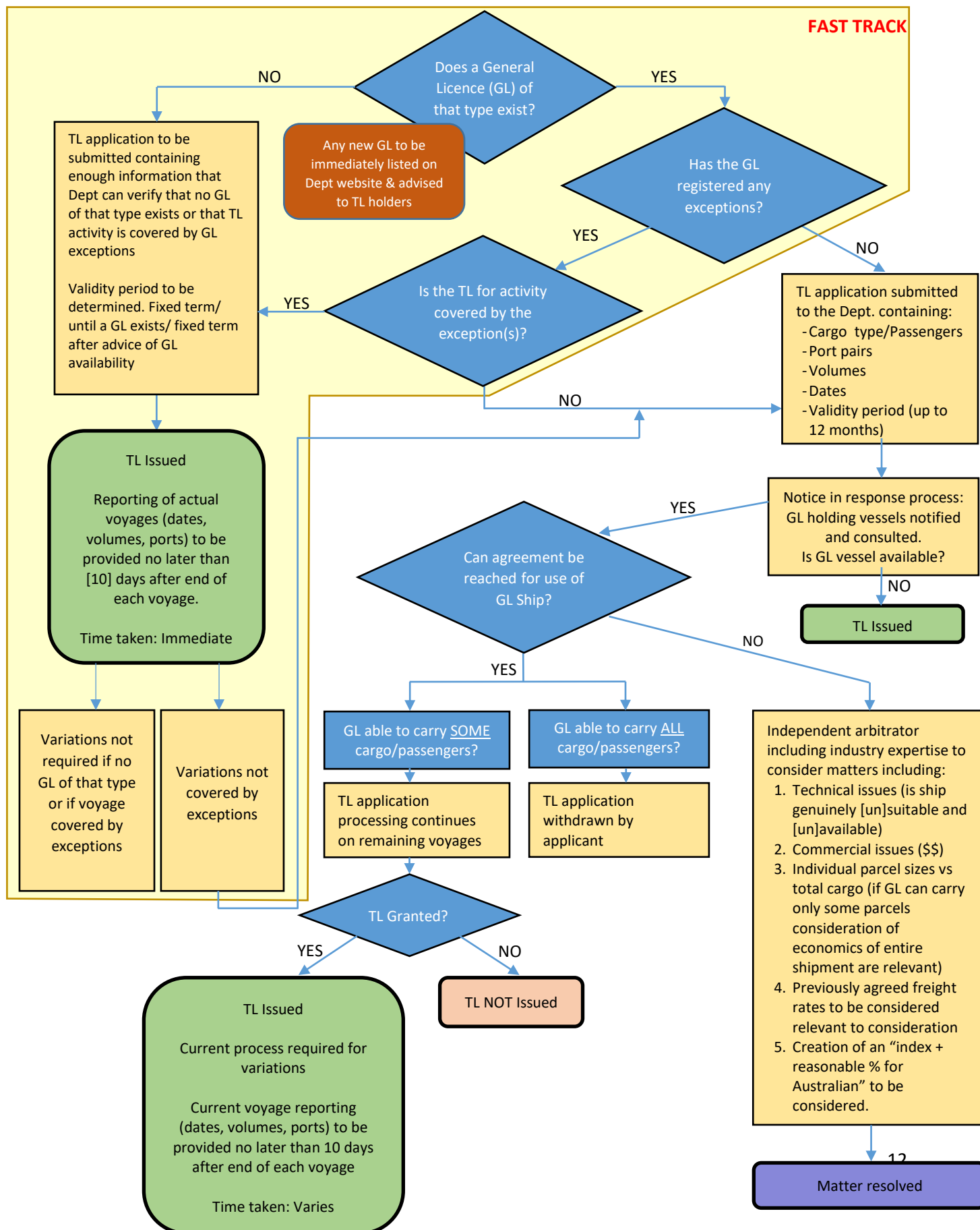
Teresa Lloyd (Convener)
Dan Pearson & Jarrod Moran (AMOU)
Mick Doleman & Rod Pickett (MUA)
Dimity McCredie (Carnival) via teleconf
Neil Linwood (CLIA)
Rob Tandy & Steve Reynolds (APT)
Bill Milby, Mark Stothard & Craig Howson (North Star Cruises)
Perry Wilkes (Coral Expeditions)
Kylie Bartel (Great Escape)
Apology: Sen J. Lambie

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Annex B - Flowchart for Temporary Licence (TL) application

Application can be made by any of the existing range of eligible applicants.



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Annex C – Use of civilian capability by other Governments

UK Royal Fleet Auxiliary

The civilian-manned RFA delivers worldwide logistical and operational support for the wide range of tasks the Royal Navy undertakes including warfighting, counter-piracy, humanitarian and disaster relief, and counter-narcotics operations.

The fleet consists of:

- Casualty ship – providing hospital and specialist aviation training facilities
- Forward repair ship – capable of maintaining vessels away from base ports
- Landing ships (3) – designed to transport equipment and personnel
- Stores (3) – supplying ships at sea with food, ammunition and spares
- Tankers (4) – supplying ships on operations at sea with fuel

<http://www.royalnavy.mod.uk/our-organisation/the-fighting-arms/royal-fleet-auxiliary>

USA Military Sealift Command

The United States Military Sealift Command has the responsibility for providing sealift and ocean transportation for all US military services as well as for other government agencies.

Military Sealift Command ships are made up of a core fleet of ships owned by the United States Navy and others under long-term-charter augmented by short-term or voyage-chartered ships.

Five programs comprise Military Sealift Command: Combat Logistics Force, Special Mission, Prepositioning, Service Support, and Sealift. As of June 2013, Military Sealift Command operated around 110 ships, and employed 9,800 people (88% of whom are civilians).

The fleet includes the following vessel types: cable laying and repair ship; hospital ships; fleet ocean tugs; and rescue and salvage ships; tankers; large, medium speed roll-on/roll-off ships, high speed vessels, dry cargo ships, break-bulk ships, container ships, survey ships, fleet replenishment oilers, and more.

Information obtained from: https://en.wikipedia.org/wiki/Military_Sealift_Command

Civil Service Mariners (extracted from <http://www.msc.navy.mil/civmar/>)

A civil service mariner, or CIVMAR, is a federal government employee who pursues a civil service, Navy career. CIVMARs account for 80% of our workforce, their service is the backbone of our mission and it plays a vital role in the Navy's ability to operate forward every day.

Because our ships are operated by civilians, crewing levels and crew organization aboard our vessels reflect the standards found aboard civilian commercial ships rather than combatant ships.

Additionally, the crews are divided between licensed and unlicensed personnel. Licensed personnel (i.e. the ship's master and chief engineer) hold a current, U.S. Coast Guard-issued license, which is obtained through a combination of sea time and successful completion of a licensing exam. Although the division between licensed and unlicensed personnel aboard our ships may be compared to the officer/enlisted relationship aboard combatant vessels, a more appropriate analogy is the management/labor relationship in the civilian industry.

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Annex D – Seafarer Income Tax

The benefit to the nation of having a large pool of qualified seafarers is that it helps to secure the strategically valuable shore based skills that the national relies upon in maritime services.

The purpose of this proposal is to enable Australian seafarers to accept employment from a foreign company in international shipping at competitive rates without that resulting in significantly lower take home pay than their international counterparts (most of whom are not subject to income tax in their home countries).

It is proposed that a regime be introduced that allows individuals to be tax free if they spend a certain amount of time working overseas and allows them to manage their own tax affairs.

At present, there are few Australian seafaring officers employed in internationally and almost none who are resident tax payers. This is because international seafarer wage rates are lower than Australian wages as in most 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 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, thus making them competitive with their international colleagues.

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.

This measure complements the existing seafarer tax offset, which 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.