



Submission to:

Coastal Trading Reform for Cargo Vessels – Discussion Paper, issued by Dept of Infrastructure - Sept 2020

MIAL Contact:

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23 October 2020

About MIAL

Maritime Industry Australia Ltd (MIAL) is the voice and advocate for the Australian maritime industry. MIAL is at the centre of industry transformation; coordinating and unifying the industry and providing a cohesive voice for change.

MIAL represents Australian companies which own or operate a diverse range of maritime assets from international and domestic trading ships; floating production storage and offloading units; cruise ships; offshore oil and gas support vessels; domestic towage and salvage tugs; scientific research vessels; dredges; workboats; construction and utility vessels and ferries. MIAL provides a full suite of maritime knowledge and expertise from local settings to global frameworks. This gives us a unique perspective.

We work with all levels of government, local and international stakeholders ensuring that the Australian maritime industry is heard. We provide leadership, advice and assistance to our members spanning topics that include workforce, environment, safety, operations, fiscal and industry structural policy.

MIAL's vision is for a strong, thriving and sustainable maritime enterprise in the region.

This submission

MIAL has inserted comments throughout the paper circulated by the Department as well as answering the specific questions provided at the end of the document. MIAL comments are in red and at times when the comment refers to a specific reference within the original paper that text has been highlighted also.

MIAL notes at the outset that these changes are no substitute for meaningful shipping policy reform that would serve Australia to secure the strategic maritime industrial and skills base this nation needs now more than ever as the COVID-19 Pandemic has exposed the fragility inherent in our utter reliance on foreign ships and seafarers for not only our international but also our domestic trade. Appendix 1 of this submission is a summary of work recently conducted by MIAL highlighting the very great need for meaningful and urgent reform.

1.2 Overview of the Key Changes Proposed

The eight key changes proposed have been developed through the consultation process. Each of the changes proposed in this section would be implemented as part of the 'Cargo and Route Nomination System' proposed in [Section 2](#), with the exception of changes proposed for emergency licences, which are dealt with separately in [Section 3](#). Your feedback is sought on whether the proposals are reflective of the consultation process to date. Suggested changes or alternative solutions are also welcomed, in line with the boundaries set out above.

1. *Separation of licencing for cargo and passenger vessels*

Following feedback from a number of stakeholders, the first proposal is for the separation of licencing for cargo and passenger vessels under the Coastal Trading Act. This recognises that cargo and passenger operations are very different, and that passengers make choices about offerings and may not agree to a different offering under a successful challenge. Any regulatory system needs to reflect this. Benefits of this separation would include simplifying the process for making future changes to either cargo or passenger vessel frameworks, as well as providing a more tailored approach to the regulation of passenger vessels (considering factors such as vessel type, service offering and consumer choice when granting a licence). As noted above, passenger vessel options will be covered in a separate paper, to be provided at a later date.

This is supported.

2. *Cargo and Route nomination system for general licence holders*

This proposal would replace the existing system, where general licence holders are notified of all voyage applications and variations, with a 'cargo and route nomination system.' The new system would allow general licence holders to specify the routes, cargoes and volumes for which they may challenge temporary licence holders. The proposed nomination system would maintain protections for Australian vessels, but remove unnecessary administrative burden for them. This means they would no longer receive notices about temporary licence applications that are not relevant to them. The nomination system would also support the automatic approval of temporary licences for routes or cargoes where no general licence holder is operating. At any point in time should a new general licence holder commence operations, or an existing general licence holder change operations (e.g. by moving to a new route or acquiring a new vessel), they can enter the system by nominating for cargo and routes. This would mean that the protections offered to General Licence holders in the current framework are retained, while at the same time introducing an improved administrative system to facilitate notice in response challenges, to the benefit of all licence holders.

The intention of what is expressed here is supported but that does not seem to translate to the proposal provided which limits/removes and otherwise erodes GL rights to trade anywhere, anytime – which as an Australian vessel with Australian crew is its' right.

3. *Removal of five-voyage minimum for temporary licences*

Temporary licence holders would no longer be required to list a minimum of five voyages on applications. This would enhance the efficiency of Australian shipping by allowing companies to make 'one-off' voyages, or use spot hire at short notice. All protections currently in place for general licence holders would remain in place for nominated cargoes and routes.

This is supported.

4. *Automatic approvals of temporary licence applications where there is no approved general licence route/cargo nomination*

Voyage applications under temporary licences would receive automatic approval for routes or cargo types where there is **no approved route/cargo nomination** by a general licence holder. This change would save time and remove unnecessary red tape by removing the consultation and notice in response timeframes in this case. Applicants would still need to ensure the vessel name is submitted at least two business days prior to loading to assist in managing import exemptions. Improvements to the current notification requirements are proposed in [Section 2.8 Temporary Licence Holder Responsibilities](#). Automatic approvals would not apply for any voyage applications where an approved route/cargo nomination is in place, with penalties to apply for any voyages undertaken without an appropriate licence.

This is supported, subject to our objection to the approval process proposed for the GL holders.

5. *Align new matters and authorised matters timeframes*

This proposal aims to streamline the processes for temporary licence holders to vary their licence by aligning the timeframes and methods for new and authorised matters. The proposed timeframes for the 'Temporary Licence Variation Process' application are at [Table 2](#), and the application process is detailed in [Section 2.7 - Temporary Licence Variation Process](#). Benefits of aligning these timeframes include an extended consultation timeframe for general licence holders to review licence variations for authorised matters where these variations include voyages on the nominated cargo/route of a general licence holder.

6. *Voyage notification requirements*

Under this proposal, most voyage details, with the exception of the vessel name, can be changed up until loading begins, provided the amended details do not fall upon a general licence holder's nominated route/cargo. It is important that the vessel name continues to be provided at least 2 business days prior to loading to enable ABF to determine if the vessel is exempt from importation. In addition, voyage notifications would only be required when the vessel name has changed from that approved on the licence (if listed), or when a vessel was not specified at the time the application was submitted. It is anticipated that this change would build greater flexibility and automation into the system to further reduce red tape. See [Section 2.8 - Temporary Licence Holder Responsibilities](#).

This could be more flexible. As long as no changes encroach on any part of a GL route/cargo even after sailing discharge port could change, for instance.

7. *Tolerance limits*

Under the proposed reform, there would be no tolerance limits needed for temporary licence voyages for those routes or cargo types where there are no general licence holder route/cargo nominations. For routes/cargo types where there is an approved general licence holder route/cargo nomination, existing tolerance limits would apply. These changes are detailed in [Section 2.8 - Temporary Licence Holder Responsibilities](#).

These could potentially be lowered now that individual voyages are permissible (so the need for

variation will be less).

A different measure of the volume of cargo is required for containerised cargo as the % figure has very different impact on this cargo type vs bulk cargos. We are happy to discuss what that might be.

8. *Emergency licences*

Several changes to existing emergency arrangements are proposed, including broadening the meaning of 'genuine emergency' in the Coastal Trading Regulations to include events that require a significant and coordinated responses from the Commonwealth, state governments, and/or industry, and consolidating energy security situations to fit within the emergency licence framework. These proposals are dealt with in greater detail in [Section 3 – Emergency Licences](#).

It is not clear why this is required if a single voyage can be approved and the only timeframe issue is the 2 days for customs purposes. Having said that, if it is to be retained as described that is OK too.

Note on dry-docking and offshore oil and gas

Appropriate coverage of vessels while dry-docking was discussed in the stakeholder meeting in December 2019. Coverage of vessels on voyages to and from offshore oil and gas facilities was also discussed. This coverage was seen by many in the meeting as an issue to be resolved under the *Customs Act 1901*. The Department proposes that these matters be addressed separately to coastal trading reforms, and will discuss these issues further with the Department of Home Affairs and the Australian Border Force.

2 Cargo and Route Nomination System

Protections for Australian Vessels

The Government has stated it will maintain protections for Australian vessels. Currently, General Licence (GL) holders can challenge Temporary Licence (TL) voyages through the Notice in Response (NIR) process. The ability for GL holders to challenge will not change under the proposed reforms, where an approved nomination is in place.

2.1 Key points

- A GL holder can nominate the route(s) or cargo type(s) on which they wish to make challenges. When nominating a cargo type, the GL holder should also nominate the volume range they are capable of moving.
- A 'reasonableness test' will be applied to ensure any nomination can be delivered by the GL holder.

MIAL objects to this test. A GL holder must be able to nominate whatever routes they choose. A GL must remain a guarantee of unfettered access.

There is no history of GL holder behaviour that we are aware of that would justify Government approval/vetting of GL nominations.

If there are concerns over the reasonableness of a GL nomination this should be managed via a discussion directly with the GL holder. A regulatory approach is not supported.

- TL holders will have voyage applications automatically approved where there is no approved GL route/cargo nomination.
- The GL and any nominations last for a period of five years **or until withdrawn by the GL holder**. Upon the renewal of their licence, a GL holder can re-nominate the same route or cargo type for the vessel without having to undergo another assessment period (detailed below).

MIAL objects to the assessment process in totality.

- As is currently the case, a GL is granted to an organisation to authorise a specified *vessel* (registered on the Australian General Shipping Register) to be used for coastal trading for five years. A Temporary Licence is granted to a *company* and authorises the company to use foreign- flagged vessels to engage in coastal trading for 12 months.
- If the GL holder wants to alter their route/cargo nomination, there will be another assessment period before they can contest TL voyages.

MIAL objects to the reasonableness test. A GL holder must be able to nominate whatever they choose. A GL must remain a guarantee of unfettered access. Please see comments above.

2.3 Proposed Nomination Model

Under the proposed model, GL holders will be able to nominate the routes and cargo types on which they can challenge TL voyages.

This framing of what a GL is and can do needs to be adjusted. A GL has far more than the right to contest. A GL has the right to Australian domestic trade. A TL does not. It would be appropriate in fact if a TL seeking a voyage on a route inhabited by a GL was required to check with the GL operator BEFORE lodging an application, rather than the other way around.

For these routes, they would receive notice of TL voyage applications, and retain the ability to challenge TL voyage applications through the Notice in Response process. A new GL and/or nomination can enter the system at any time. Where there are no approved GL nominations, TL holders will have voyage applications automatically approved.

The proposed nomination model aims to reduce the administrative burden on all licence holders and applicants by ensuring that only relevant information is sent to the licence holder. For example, a GL vessel that carries grain in a bulk carrier along a route that the GL holder has nominated will only receive advice of TL voyage applications that cover their nominated route/cargo. They won't be notified of TL applications for other voyages, such as container movements that they could not reasonably deliver.

The nomination for a route or cargo type would expire at the end of the GL licence period, i.e. after five years, unless the GL holder requests an earlier cessation date. The GL and route/cargo nomination can be renewed 30 business days prior to the end of the licence period. Upon renewing a nomination, the Department would conduct a review, ensuring the GL holder still has the capacity to carry the cargo at volume on the route(s) they have nominated. The review will be similar to the 'reasonableness test' (detailed below). A new GL vessel can lodge a nomination at any time, via the process outlined in 2.3.

MIAL objects to the reasonableness test. A GL holder must be able to nominate whatever they choose. A GL must remain a guarantee of unfettered access.

2.4 Process for GL Holders to Make Cargo and Route Nominations

MIAL objects to this test. A GL holder must be able to nominate whatever they choose. The Department must take what the GL holder declares to them and apply that without question. It is up to the GL holder to decide what information they get / trades they are interested in, not for the Department to assess that for them.

A GL must remain a guarantee of unfettered access.

The following sets out the steps for application and approval of a cargo/route nomination.

Step 1. The GL holder completes and submits an application via the Coastal Trading Licencing System (CTLS) to nominate a route or cargo type to be able to challenge a TL voyage. Multiple selections (routes and cargo types) can be made at once. Evidence will be needed to show that the GL holder can reasonably carry the specified cargo along that route. For more on the reasonableness test, see **Step 5**.

Step 2. The nomination gets published on the Department's website within 2 business days.

Step 3. All TL holders are notified via email of the GL holder's application for route/cargo nomination, which will note that the nomination has not yet been accepted by the Delegate.

Step 4. A 20 business day 'assessment period' by the delegate is triggered when the nomination application is published on the Department's website.

Step 5. Process during the assessment period:

- The GL holder cannot submit a Notice in Response (NIR) for the nominated route/cargo type, as approval of the nomination is pending.
- TLs operating on the nominated route/cargo type can only add new voyages to their licence with a load date not exceeding 10 business days after the assessment period.
- TL voyages submitted with a loading date that falls within the assessment period and the 10 business days after, will continue to be automatically approved (note: If the GL nomination is approved, there will be no automatic approval of TL voyages from 10 business days after the assessment period, see below).
- The Department will conduct a reasonableness test during the assessment period to determine whether the GL's application to challenge a given route or cargo type is appropriate. As part of the reasonableness test, the Delegate will consider the following:
 - Can the GL holder's vessel carry the volume and type of cargo they are nominating for?
 - Other relevant considerations, such as:
 - Timeliness of service for shipper – If the GL holder's vessel is already engaged along other routes, evidence the vessel can provide the service within required timeframes.
 - Whether the nomination is an ambit claim or vexatious

A GL is, and must remain, a guarantee of unfettered access. We cannot emphasize this enough. We repeat our earlier comment that previous GL holder behaviour does not warrant suggestion of ambit or vexatious challenges to TLs and if there are concerns they can be dealt with via consultation not regulation.

- The Delegate may request further information from GL holders to finalise the nomination.

Step 6. Process after the assessment period:

(a) If the GL route/cargo nomination is accepted

- The Department will notify the applicant and all TL holders of the approval of the route/cargo nomination, and publish this information on the Department's website.
- TLs can once again apply in advance (i.e. more than 10 days after end of assessment period) for voyages that correspond with the GL route/cargo nomination.
- TL voyages will not be automatically approved. Unless otherwise specified, existing processes under the Act for TL voyage applications would apply (i.e. consultation timeframes for authorised and new matters, tolerance limits). For more information, see [Table 2](#).
- The GL holder will be notified of the TL voyage application via email.
- The GL holder will have 2 business days to issue a NIR for an authorised or new matters application. Note: The current consultation periods are 24 hours for authorised matters and 2 business days for new matters. For comparison, current and proposed timeframes are at [Table 2](#).

If the GL submits a NIR

- The TL and GL then negotiate about who will perform the voyage after which time the TL holder is obliged to inform the Delegate of the outcome.
- If an agreement is not reached, the Delegate will decide to grant or refuse the licence, based on those factors currently set out in the Act.

If the GL holder does not submit a NIR

- In the event that a GL holder chooses not to issue a NIR for a nominated route or cargo type, the TL holder operating in the nominated route or cargo type must still observe tolerance limits to protect the integrity of the system. The tolerance limits are:
 - The total amount of cargo carried is not to vary by more than 20% greater than or less than the amount approved for the voyage.
 - The vessel cannot load more than 5 days before or after the expected loading date specified on the temporary licence.

(b) If the GL route/cargo nomination is rejected

- GL holders will be informed in writing by the Delegate, and the statement will include reasons for the decision.
- TL holders will again receive automatic approvals for any voyage applications for those routes and/or cargo types where the unsuccessful nomination was made.

2.5 Timeframes for Licence Applications

Descriptions

Publication Timeframe: The time between when the Department receives the application and when the application is published on the Department's website.

Consultation Period: The time a GL holder has to lodge an NIR with the Department.

Notice in Response Period: The time a GL holder(s) has to negotiate with a TL holder concerning a new matters, or authorised matters application.

The other way of managing this step is to require the TL applicants to confirm with the GL holders that they cannot / do not wish to carry the cargo and submit that as part of their application. i.e. put the onus on the TL applicant to ensure there is a gap in the trade rather than require the GL holder to defend their trade. Please consider this comment at all points where NIR is mentioned.

Processing Timeframe: The total amount of time the Department has to process an application. Under sections 34 and 77 of the Act, the following days are not currently counted towards the processing timeframe:

1. The day on or after the Delegate receives a NIR in respect of the application.
2. The day on or before the applicant notifies the Delegate of the outcome of the negotiations.
3. If the applicant fails to notify the Delegate, the last day of the period within which the applicant was required to notify the Delegate.
4. Additional processing time may also be required if the Delegate requests further information.

Proposed changes to applications and timeframes

- The introduction of a 'Temporary Licence Variation Process' (TLVP) whereby the

timeframes and application methods for new matters and authorised matters are aligned to 2 business days.

- *Note: The NIR timeframe for an authorised matters application is currently not specified in the Act, and the consultation timeframe for authorised matters is 24 hours. Shifting the timeframe for authorised matters from 'hours' to 'business days' may impact timeframes for applications submitted before a weekend and/or public holiday, extending the actual time in which an application is approved.*
- The timeframes for processing authorised matters applications will also be aligned with new matters processing timeframes. This will have the effect of simplifying lodgement requirements and providing an additional consultation day for GL holders to review an authorised matters application (resulting in a consultation period of 2 business days, and processing period of 7 business days).
 - *Note: For temporary licence applications, the licence itself is not subject to consultation or notice in response processes. The processing timeframe for a temporary licence application would be maintained, to enable the Department's Shipping Business Unit to appropriately assess the validity of the application.*
- For all new and authorised matters applications, the consultation, NIR and processing timeframes (highlighted in blue in **Table 2**) would be eliminated for voyages that do not correspond with a GL route/cargo nomination.
- Both new matters and authorised matters applications will be published on the Department's website.
 - *Note: Currently, new matters applications are published but authorised matters are not. This will increase the transparency of operations and provide operators with data on the current market.*
- Timeframes for GL applications remain unchanged.
- Under the new system, all emergency licences, approved and rejected, will be published on the Department's website within 2 business days of the decision by the delegate.
- Details of any emergency voyages completed outside of business hours for reasons that meet the definition of a 'genuine emergency' will be published on the Department's website within two business days of the completion of the emergency voyage. See [Section 3 - Emergency Arrangements](#).
 - *Note: Currently only emergency licences that are granted are published on the website (section 67(2) of the Act refers). Emergency licences cannot be challenged by GL holders and so are not subject to consultation and NIR timeframes.*

Table 1 outlines current timeframes for all coastal trading licence applications, while Table 2 outlines the proposed changes to these timeframes. All references to sections of the Act refer to the current *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

The proposed times for varying authorised matters (i.e. an existing voyage) seem excessive. The processing times for all matters should be much shorter unless there is a notice in response.

Table 1: Current Timeframes for Licence Applications

	Current Timeframes			
Application Type	Publication	Consultation	Notice in Response	Processing
General Licence (GL)	If approved Section 16(2) directs certain information to be published. No timeframe specified.	N/A	N/A	10 business days Section 15(3)(a)
Temporary Licence (TL)	2 business days Section 30(a)(b)	2 business days Section 31(a)	2 business days Section 32(2a)(2b)	15 Business days Section 34(4)
New Matters	2 business days Section 53	2 business days Section 53	2 business days Section 53	7 business days Section 54(1)
Authorised Matters (AM)	AM applications not published on the website. GL holders and other relevant people notified by email under Section 45(1)	24 hours Section 45(3)	Not specified in the Act	2 business days Section 46(4)(b)
Energy Security Situation	N/A	N/A	N/A	24 hours Section 46(4)(a)
Emergency Licence	N/A	N/A	N/A	3 business days Section 67(4)(a)

Table 2: Proposed Timeframes for Licence Applications

	Proposed Timeframes				
Application Type	Publication	Consultation	Notice in Response	Processing	
General Licence (GL)	If approved Section 16(2) directs certain information to be published. No timeframe specified.	N/A	N/A	10 business days Section 15(3)(a)	
Temporary Licence (TL)	2 business days Section 30(a)(b)	N/A	N/A	15 Business days Section 34(4)	
Temporary Licence Variation Process	New Matters	2 business days Section 53	2 business days Section 53 (For nominated routes only)	2 business days Section 53 (For nominated routes only)	7 business days Section 54(1)
	Authorised Matters	2 business days	2 business days (For nominated routes only)	2 business days (For nominated routes only)	7 business days
Emergency Licence	All emergency licences approved or rejected will be published within 2 business days of the decision.	N/A	N/A	3 business days Section 67(4)(a)	

2.7 Removal of Five Voyage Minimum for Temporary Licences

The five voyage minimum for TLs will be removed. A TL application will only require one voyage to be considered valid.

A TL will last for a period of 12 months. There will be a licence application fee and a fee per voyage. For more information, see [Licence Fees](#) (below).

While TL *voyages* on an approved licence that do not correspond with a GL nominated route will be automatically approved, temporary *licences* will not be automatically approved.

The application process for a TL will largely remain the same, whereby the application is submitted via CTLS with evidence that the applicant meets the requirements in Section 28(1) of the Coastal Trading Act, and a minimum of one voyage is listed (rather than the current five voyage minimum).

This is supported.

2.8 Temporary Licence application process

The following sets out the steps for the TL application process.

Step 1. The owner, charterer, master or agent of a vessel or a shipper applies for a TL via CTLS.

Step 2. Within 2 business days after an application is received, the application will be published online (with personal or commercial in confidence information redacted) and where relevant, **GL holders who have nominated to challenge a route/cargo will be notified.**

Please see earlier comment regarding the expression of this. This framing of what a GL is and can do needs to be adjusted. A GL has nominated that they occupy a route/cargo. This is quite different from nominating a right to challenge. A GL has the right to Australian domestic trade. A TL does not.

- GL holders will no longer be notified of all TL applications received by the Department.

Step 3. Where a voyage(s) on a TL corresponds to a GL route/cargo nomination, GL holders can lodge an NIR for the voyage(s) listed on the TL application within 2 business days after it is published.

The other way of managing this step is to get the TL applicants to confirm with the GL holders that they cannot / do not wish to carry the cargo and submit that as part of their application. i.e. put the onus on the TL applicant to ensure there is a gap in the trade rather than require the GL holder to defend their trade. Please consider this comment at all points where NIR is mentioned.

Step 4. The Delegate must decide an application for a TL within 15 business days after the application is made, noting that any day(s) on or after the Delegate receives a NIR and notifies the Delegate are not counted as business days (Section 34(5)(a)).

Is there any reason this can happen instantaneously if there is no NIR?

Step 5. Delegate makes a decision

- (a) If the Delegate grants a TL, he or she must, as soon as practicable provide the applicant with a licence.
- (b) If the Delegate refuses an application for a TL, he or she must, as soon as practicable, notify the applicant in writing of:
 - The decision
 - The reasons for the decision

Step 6. The outcome of the application will be published on the Department's website within 2 business days, as stipulated in Section 30(a)(b).

The application for a new TL voyage on an approved licence (new matters) will change under the proposed nomination model. Voyages added to an approved TL (new matters) via CTLS will be granted automatically, provided they do not correspond with a route or cargo type that has been nominated for service by a GL holder. Variation to an existing TL voyage (authorised matters) will need to be updated in CTLS but will be automatically approved unless the revised voyage now corresponds with a GL route/cargo nomination. All TL Variation applications will be published, regardless of whether they correspond with a GL nomination.

2.9 Temporary Licence Variation Process

The Department is proposing to align the timeframes and methods for new and authorised matters, as indicated in [Table 2](#). The proposed process for applying to vary a temporary licence is as follows:

Step 1. The owner, charterer, master or agent of a vessel or a shipper completes either a new matters or authorised matters application via CTLS.

If voyage(s) do not overlap with a GL nomination they will be automatically approved, and the remaining steps are not required.

Step 2. The Department has 2 business days from the time in which the application(s) is received, to publish the new or authorised matters application online.

Step 3. Where one or more voyages on the TL application corresponds to a GL route/cargo nomination, GL holders can lodge a NIR for the voyage(s) listed on the TL application within 2 business days after it is published.

If no NIR is received, the TL voyage is approved, and the remaining steps are not required. If an NIR is received, the TL voyage applicant will be notified via email.

Step 4. The Department provides a copy of the NIR(s) to the TL voyage applicant.

Step 5. Applicant must negotiate with GL holder who lodged the NIR and notify the Minister of the outcome within 2 business days.

Step 6. If no outcome is reached, the decision is referred to the Delegate.

Step 7. Delegate makes a decision

- (a) If the Delegate approves the voyage, he or she must, as soon as practicable provide the applicant with an updated licence.
- (b) If the Delegate refuses the voyage, he or she must, as soon as practicable, notify the applicant in writing of:
 - The decision
 - The reasons for the decision

The Delegate must inform both parties of the outcome of the application within 7 business days after the day the application was made, noting that consultation and notice in response timeframes do not count towards the 7 business day processing timeframe.

2.10 Temporary Licence Holder Responsibilities

Applying for voyages

TL holders will be required to apply for a voyage but will receive automatic approval **where there is no GL holder route/cargo nomination to challenge a TL holder**, removing the consultation, NIR and processing timeframes.

Please see earlier comment regarding the expression of this. This framing of what a GL is and can do needs to be adjusted. A GL has nominated that they occupy a route/cargo. This is quite different from nominating a right to challenge. A GL has the right to Australian domestic trade. A TL does not.

TL applicants will be responsible for checking the routes, cargo types and volumes under a GL holder's nomination, as these will prevent a TL voyage from being granted automatically. This information will be available on the Department's website at all times.

'Phantom' voyages are still not acceptable. As is currently the case, applicants will need to agree to a declaration stating their genuine intention to complete the voyage(s) in an application. Penalties may be considered for applicants submitting ambit nominations, or where there is an identified pattern of licence holders not conducting voyages.

In the event an automatic voyage approval is not granted (because of a GL route/cargo nomination), and the applicant has assumed otherwise, the TL applicant will incur all associated costs, for example mooring and demurrage fees. Commencing a voyage without approval is a breach of legislation, with penalties applying for any such cases of non-compliance, unless there are clear grounds for the voyage to proceed in an emergency situation.

A TL voyage that does not correspond to a GL nomination can be varied at any time **prior to loading**. If changing a TL voyage results in the voyage corresponding to a GL nomination, the authorised matters application would not be automatically approved and the consultation, Notice in Response (where applicable) and processing timeframes outlined in [Table 2](#) would apply.

Why would a TL that has no bearing on a GL route/cargo not be able to vary at any point during the voyage?

Tolerance Limits

The current tolerance limits set out under the Coastal Trading Act are:

- The total amount of cargo carried is not to vary by more than 20% greater than or less than the amount approved for the voyage.
- The vessel cannot load more than 5 days before or after the expected loading date specified on the temporary licence.

Now that TLs can be applied for more often as single voyages, are such large tolerances required? These could potentially be reduced. Note also, earlier comment regarding the cargo volume needing a different measure for containers vs bulk.

The Department proposes that these existing tolerance limits only apply for TL voyage applications that interact with GL holder route/cargo nominations, in which case normal consultation timeframes would apply. Where a TL voyage applications interacts with a nominated GL route/cargo, the

applicant will be alerted automatically through CTLS.

Offences will apply where TL holders operating an automatically approved TL voyage are found to have varied their volume to within the scope of a GL nominated route or cargo.

These should be serious offences with serious penalties attached to be a real deterrent.

TL Notification Requirements

Under the proposed changes, all voyage details except the vessel's name can be changed **up until the vessel is loaded**, provided the voyage does not correspond with a GL route/cargo nomination.

Why would a TL that has no bearing on a GL route/cargo not be able to vary at any point during the voyage?

TL holders will still be required to provide the vessel name at least 2 business days before loading commences, consistent with Section 61(a) of the Coastal Trading Act, unless the vessel name has already been provided on their licence application and remains unchanged. If a vessel name is not provided at the time of application, the applicant will be reminded that they will need to submit the vessel name at least 2 business days prior to loading.

Currently, a TL voyage cannot be changed via an authorised matters application after the vessel name has been submitted in CTLS. Under the proposed new framework, TL holders that have already listed the vessel name for a voyage will be permitted to amend voyage details and receive automatic approval, provided the application does not overlap with a GL route/cargo nomination, and is submitted before loading.

The nomination of the vessel being a barrier for any further changes seems very artificial and should be overcome.

The Coastal Trading Act currently mandates that Temporary Licence holders provide the Department with advanced notification of their voyage, with penalties for non-compliance (Section 61). Notifications are used by the Australian Border Force (ABF) to ensure that vessels arriving at port are exempt from importation duties under the *Customs Act 1901*. The *Customs Act 1901* cannot exempt a vessel from importation, however Section 112 of the Coastal Trading Act exempts vessels on a temporary or emergency licence from being subject to importation.

Notifications will not be sent to ABF until 2 days prior to loading, even if the vessel name is listed in advance, to ensure operators have the flexibility to make changes closer to the load date. It is the responsibility of the TL holder to ensure these details are correct, and that the details of the vessel are provided 2 business days prior to loading.

TL Reporting Requirements

As is currently the case under Section 62 of the Coastal Trading Act, TL holders will need to submit a voyage report within 10 business days of the completion of each voyage. The reporting process is designed to increase transparency and provide operators with data on potential market opportunities.

To assist the Shipping Business Unit's compliance activities, the reporting form will be updated to require TL holders to detail the date that discharge was completed.

Information required in a voyage report will include:

- the vessel used for the voyage;
- the actual loading date of the voyage;
- the kinds and volume of cargo carried on the voyage; **This needs to be improved from what is provided now. The types of cargo should be specific and accurate.**
- the ports at which the cargo was loaded and discharged;
- the date discharge was completed, and;
- such other information as is prescribed by the regulations.

The Department will regularly monitor voyage reports to ensure TL conditions are being adhered to. The Department may also obtain information from other sources to confirm that vessels loaded and discharged cargo in accordance with their TL conditions. Section 77 of the Act also provides the Delegate with the power to request information from any party – in this instance the Delegate may request information (such as bills of lading) from an organisation that would assist in confirming that a voyage occurred in the manner described on the licence and carried the cargo described on the licence.

3 Emergency Arrangements

Currently, the Coastal Trading framework includes a separate Emergency Licence to be used in limited circumstances, allowing a voyage to be conducted before the consultation period has expired. An Emergency Licence has never been issued under the current framework.

Now that a TL can be issued for single voyage it is hard to see there being a need for this. If the TL for an Emergency Situation is on a nominated GL route/cargo the question has to be asked – why not use the GL ship....it's already here for a start which must be an advantage. If there is no GL nomination then the TL is automatically approved so why is there a need for this additional type of license?

The Department proposes that emergency provisions in the Coastal Trading Act be amended to be more sensitive to commercial circumstances. While emergency provisions are not intended for common use, these arrangements remain an essential tool in ensuring a controlled response to a critical incident.

Currently, the Act does not allow discharge ports to be changed mid-voyage. A number of scenarios have occurred over the period that the Act has been in force where this ability may have been helpful. This includes plant breakdowns that halt production (such as at an oil refinery), weather events (such as bushfires and cyclones), problems with cargo quality, and unforeseen demand spikes (e.g. panic buying in an emergency, as seen during the COVID-19 pandemic). **We do not see why this cannot be allowed under a regular TL.**

To address this, the Department proposes to amend existing emergency arrangements to include the ability to change the parameters of a licence or voyage in an emergency situation. This would include the ability to change the discharge port after cargo has been loaded, to allow a ship to be diverted to meet an emergency. Provided the situation is a 'genuine emergency' (see below), normal penalties would be waived.

The Department also proposes to bring the Energy Security Situation (ESS) variation into the emergency arrangement (see below), rather than having a standalone variation.

Meaning of 'genuine emergency'

The Department proposes the meaning of genuine emergency in the Coastal Trading Regulation be amended to include events that require significant and coordinated response from the Commonwealth, state governments, and/or industry that relate to:

- a situation risking loss of human life, including natural disasters like fires, floods, and cyclones as well as medical emergencies and acts of aggression like terrorism;
- An event that results in a shortage of vital goods (such as medical, food, gas, fuel or water), disruptions to vital services, or a major risk to the Australian economy or the economy of an Australian state or territory;
- An unavoidable, industrial or business process breakdown that would have clear and substantial impacts on the supply chain; and
- Any other extenuating circumstances in which the Delegate considers that emergency arrangements may be appropriate.

It is important to note that a 'genuine emergency' would not include circumstances where a ship operator needs to meet contractual obligations or where an operator is likely to incur financial losses, unless the above criteria are also satisfied. The Delegate would also be able to take into account whether the situation had occurred previously and was the result of poor planning or business practice by the operator. If the Delegate sees a pattern of use, then the emergency licence application could be rejected. All emergency licences approved and rejected will be published by the Department within two business days from the date the licence was granted.

These emergency arrangements are intended to allow ship operators to respond to urgent and serious circumstances outside of their control. The arrangements are not intended to be a 'back door' to undertake a voyage where the operator has neglected to make an application, wants to avoid the consultation period for commercial reasons, or where the circumstances could reasonably have been foreseen and avoided by the operator.

Issuing of emergency licences

If the emergency arises during business hours, and the TL holder was able to obtain approval from the Delegate (within a short time frame) to undertake a voyage, an Emergency Licence could be issued. In order to avoid any penalty, a review of the situation would need to confirm:

- The voyage assisted with a genuine emergency (to be defined in the Coastal Trading Regulation - see above); and
- The emergency was not caused by the consistently poor practices of the TL holder

(see above). For the issuance of an emergency licence, the Delegate would need to be satisfied of the following:

- The emergency situation is genuine. Applicants would need to ensure the situation falls within the above definition of a genuine emergency.
- The impact of the emergency goes beyond financial loss to the operator.
- The applicant has taken all possible measures to mitigate the incident.
- The applicant has not made previous ambit applications for an emergency licence.

Applicants for an Emergency Licence will be subject to a compliance history check with the Delegate to assess and decline applications if there is evidence of misuse.

Emergencies outside of business hours

If an emergency arises outside of business hours or if an emergency arises during business hours but the Delegate is not available, and the TL holder deems it necessary to undertake an urgent voyage or change the discharge port for cargo already loaded, the penalty would be waived if the above criteria are met and:

- The application for the Emergency Licence could not have reasonably been delayed until business hours; and
- The voyage assisted with a genuine emergency (to be defined in the Coastal Trading Regulation - see above); and
- The emergency was not caused by the negligence of the TL holder (see above).

Any emergency voyage conducted without a licence will be subject to a review by the Delegate. An emergency licence fee will still be charged to the TL holder where a licence has not been granted. If the Delegate sees a pattern of use involving emergency voyages outside of business hours (and therefore without a licence) then he or she may impose penalties in line with Section 83 of the Coastal Trading Act (Engaging in coastal trading without a licence). Emergency voyages completed outside of business hours for reasons that meet the definition of a 'genuine emergency' will be published on the Department's website within two business days of the completion of the emergency voyage.

Energy Security Situation

The Coastal Trading Act allows for a specific authorised matters variation to be granted in energy security situations (ESS). The Department proposes to bring this allowance into the emergency provisions, rather than having a standalone authorised matters variation. This would enable applicants to either vary an existing voyage or conduct an additional voyage, as long as the situation meets the circumstances of Section 1.1.4 of the Coastal Trading Regulations and Section 6(1A) of the Coastal Trading Act (as currently in force).

3.1 Licence Fees

The Department will conduct a review of all licence fees at a later date.

Licence fees will be issued per voyage for TL holders and will be used to cover the costs of the Department monitoring and enforcing compliance with the framework, for IT maintenance and for administration and assistance. There will be no cost for varying an approved TL voyage, provided it does not overlap with a GL nominated route or cargo type.

The Department's fees are informed by the Australian Government's Charging Framework and Cost Recovery Guidelines, which are available online here:

<https://www.finance.gov.au/publications/resource-management-guides/australian-government-charging-framework-rmg-302>

<https://www.finance.gov.au/publications/resource-management-guides/australian-government-cost-recovery-guidelines-rmg-304>

Under the Guidelines, the Government's policy is generally to recover the full or partial costs of any

services or regulation from industry. Consistent with this policy, licence fees may change to reflect new operating and administrative arrangements. We will communicate these new costings once a final design has been decided.

Noted.

4 Questions

1. Do you support the proposal to separate licencing frameworks for cargo and passenger vessels?

Yes. Given the current GL / TL tension in the expedition cruise sector we encourage early attention to changes in that sector in order that Australian businesses currently decimated by COVID-19 are able to focus on getting their businesses up and a running again and their employees back to work and off JobKeeper, rather than fending of TL applications from foreign operators.

2. Is the nomination of routes/cargo a workable solution?

The concept is workable but not as described in this paper where it undergoes assessment by the Department. A GL holder must be able to nominate whatever they choose. The Department must take what the GL holder declares to them and apply that without question. It is up to the GL holder to decide what information they get / trades they are interested in, not for the Department to assess that for them.

A GL must remain a guarantee of unfettered access. Any nomination by a GL is what they decide to limit their interest to.

3. Does the nomination system provide the right level of opportunity for GL holders to contest cargo on TL voyages?

No. These seems like the onus is the wrong way around. The GL holder has the right to carry the cargo and TL voyages should not be applied for unless the GL cannot conduct the voyage.

4. Do you foresee any unintended consequences of the nomination system?

MIAL see many shortcomings and unintended consequences in the system as described and do not support it. We do support a nomination system that is purely what the GL holder nominates.

5. Does the nomination system provide the coverage needed for operators servicing regional and remote communities to continue to provide these multi-stop itineraries?

We reiterate, the nomination should be entirely what the GL holder chooses to nominate for without any 'tests' or assessments or Government overlay. See answer to Qn 2.

6. Do you believe the new nomination process reduces the administrative burden on licence holders? If not, do you have an alternative process you can propose?

It increases the burden on GL holders, which is acceptable provided it is done as we indicate above – that is – the GL holder makes their nomination and that is all that is required.

Undoubtedly it decreases the administrative burden (and costs) on TL applicants who would now receive an automatic approval almost all of the time.

7. Is 30 business days an appropriate amount of time to notify TL holders of a new GL nomination? This timeframe is based on the 20 day assessment period plus 10 day window that allows automatic voyages approvals for TL's to be maintained to provide a reasonable period for the TL holders and shippers to adjust their operating schedules.

Yes – but based purely on advance notice from the GL holder that it will be entering a trade. There should be no assessment or other Government involvement.

8. Will the aligning of timeframes for authorised and new matters improve business processes?

It is likely that there will be fewer authorised matters requiring approval as the industry shifts

back to applying for voyages on an as-needs basis. However authorised matter variations should remain at 2 days processing time and all processing times should be minimised.

9. Do you agree with the proposed timeframes for licence applications listed in [Table 2](#)?
The processes time is too long – it should be nil if there is no contest and much shorter where there is.

10. Do you agree that tolerance limits should be removed where voyages do not overlap with a GL nominated route/cargo type?

Yes.

11. Do you think the current tolerance limits (20% variation of cargo volume and 5 days variation in expected load date, detailed in [Section 2.3](#)) are still appropriate for TL voyages that overlap with a GL nominated route/cargo type, or should these limits be reconsidered?

They could be lowered. Where tolerance limits have any meaning (where there is a GL nomination), they need to be meaningful. A different measure of volume would be more workable for containerised cargo and other non-bulk cargo types.

12. Do you agree with the proposed amendments to voyage notification requirements, noting that the vessel name is required to exempt the vessel from importation?

Yes. Noting that currently cargo type listed is sometimes erroneous or non-descript and this needs to be fixed.

13. Do you believe emergency provisions are still needed if appropriate changes can be made to streamline TL voyage approvals? Do you agree with the proposed emergency provisions?

An emergency situation should be able to be handled under the revised process without undue delay. MIAL do not see a need to retain this additional process.

14. Should emergency arrangements provide for emergency changes to be made to the port of discharge port for cargo that has been loaded?

Yes. But so should the new TL arrangement.

15. Are there any issues with the proposed handling of emergency situations outside of business hours?

16. Should the Delegate be required to notify GL holders in the event that an Emergency Licence is issued, or if penalties are waived for an emergency voyage?

Yes

17. Do you foresee any perverse outcomes as a result of implementing any of the suggested changes? How might these be mitigated?

We have included additional comments in this document regarding specific changes that should be made.

In addition, we assume that the process outlined within for a GL nomination does not preclude a GL from working anywhere else within the country. If that is an incorrect assumption and a GL were precluded from working elsewhere, that would indeed be a very perverse outcome.

Appendix 1

Please find attached a number of submissions and other background/supporting documents that formed the basis of the MIALs advocacy of issues of national resilience in the maritime domain.

[Submission to the Joint Standing Committee Inquiry into impacts of COVID on Foreign Affairs, Defence and Trade](#)

The second half of this submission identifies that COVID has exposed a fragility within international shipping systems. Australia's critical maritime supply chains are vulnerable because the vast majority of our sea transport capability lies with foreign entities. This leaves Australia exposed and highly dependent on foreign nations and foreign companies over whom Australia has little or no control. We believe there is a strong case for the development of a strategic industrial maritime capability to ensure Australian businesses have direct control of meaningful portions of strategic transport systems.

[Submission to Senate Standing Committee on Rural and Regional Affairs and Transport](#)

MIAL's overarching position concerning shipping policy in Australia is that we ought to have a sustainable, viable shipping industry. This shipping activity can occur anywhere – coastal, offshore and international. This shipping activity should encompass anything – freight, tourism, passenger movement, port and harbour services, offshore oil and gas, construction, scientific/research, essential services, and government services.

As the world's largest island nation, Australia requires maritime skills more so than most other countries. From the requirement to ensure trade is facilitated via Australian ports without incident, to ensuring we meet our international responsibilities as a country with one of the largest port state control tasks, the use, retention and development of maritime expertise is vitally important.

The recent Seafaring Skills Census shows that the Australian maritime sector has a projected shortage of 560+ seafarers by 2023 – a large proportion of which is in the Deck and Marine Engineer Officer skill sets.

Further, the Seafaring Skills Census identified that 80% of employers require more than base level qualifications – they require higher order skills and, critically, experience. The Seafaring Skills Census found that experience must be on certain types of ships, tanker experience being the most sought after, particularly for shore-based roles. Australia cannot rely solely on immigration to fill those roles given the global imbalance in supply and demand for quality seafarers with projected shortages of 18% by 2025.

Increasing training without securing opportunities for seafarers to work to gain experience will not achieve an outcome of growing skills, expertise and knowhow to fill the strategic shorebased roles Australia relies upon. Australia needs a minimum number of assets available to provide the training and work opportunities.

A Strategic Fleet would provide adequate training and work opportunities to secure the skills base now; provide stability for key supply chains; and offer strategic support to the nation should they ever be called upon.

[Response to Qns on Notice – Standing Committee on Rural and Regional Affairs and Transport](#)

Includes extracts from: [Economic Analysis](#) (pwc 2015) showing the additional benefits that could flow with positive policy settings for Australian shipping:

- \$4.25 billion in GDP
- employment for 9,147 people
- \$867 million in taxation revenue

[Submission to the Critical Infrastructure consultation – Home Affairs \(Sept 2020\)](#)

Our understanding is that the current proposal is not expected to reach too far into foreign ships. This creates two significant issues:

- 1) Australian ships would then be subject to the additional compliance impost and costs and further erode their ability to complete; and
- 2) supply chain security cannot be assured unless foreign ships are included since they provide almost the entire sea transport task to, from and around Australia.

[Submission to Liquid Fuel Storage Capacity - Department of Industry Innovation and Science \(July 2020\)](#)

MIAL proposes a multifaceted solution, that would help to buffer the Australian economy against vulnerabilities posed by fuel security, by including domestic on water capacity to primarily increase storage redundancy in Australia, but also increase product in the supply chain by ensuring Australia's refining capacity is maintained. It would also address the immediate threat of the loss of critical maritime skills, which ensure Australia's ongoing connectivity to the global economy in a safe and efficient manner.

[MIAL Seafarer Skills Census 2019](#)

Demonstrates a seafarer skills shortage of 560+ by 2023.

[MIAL Gender Diversity Survey 2020](#)

Demonstrates the industry's focus on improving gender diversity.