

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 135

Issued under the authority of the Minister for Infrastructure and Transport

Coastal Trading (Revitalising Australian Shipping) Act 2012

Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012

Coastal Trading (Revitalising Australian Shipping) Regulation 2012

Section 113 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 21 of Part 5 of Schedule 2 to the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (the Transitional Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Transitional Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Transitional Act. It further provides that regulations may be made prescribing matters of a transitional nature (including any saving or application provisions) relating to amendments or repeals made by Schedule 1 to the Transitional Act.

The Act establishes three types of licences (general, temporary or emergency) which would authorise vessels to engage in trade on Australian coastal waters. It also provides for the application process for each type of licence including requirements and criteria for making a decision; conditions of licences; grounds for cancellation of licences; and enforcement of the requirements.

The Transitional Act amends certain Commonwealth laws and provides for transitional arrangements to ensure supply chain will continue to operate while the new regulatory regime established under the Act is bedded down.

The Regulation supplements the requirements provided in the Act and the Transitional Act. Part 1 of the Regulation would provide for definitions. It also prescribes the special circumstances where an energy security situation, as defined in the Act, occurs. Part 4 deals with information required to be included in applications for transitional general licences, temporary licences and emergency licences. These requirements are in addition to matters listed in the Act and the Transitional Act. Part 4 also provides for the kinds of emergency that would enable a person to apply for an emergency licence. Schedule 1 provides for the fees payable when applying for a licence under the Act.

Details of the proposed Regulation are set out in the Attachment.

The Act and the Transitional Act specify no conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

In accordance with section 17 of the *Legislative Instruments Act 2003*, industry stakeholders including representatives of shipowners and operators, industry organisations like the Australian Shipowners Association, Shipping Australia Limited, Maritime Union of Australia etcetera were consulted in the making of the Regulation. The consultations occurred during meetings with representatives of shipping companies, industry associations and maritime unions, convened by the Department of Infrastructure and Transport in Sydney and Melbourne in May 2012. Over 150 industry and union representatives participated at these meetings. An exposure draft of the regulation was also released to industry and union representatives at these meetings. The draft regulation was also provided to stakeholders upon request outside of these meetings. Stakeholder comments were taken into consideration in settling the final text of the regulation.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 1 July 2012.

The Minute recommends that the Regulation be made in the form proposed.

Authority: Section 113 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012*; and

Section 21, Part 5 of Schedule 2 to the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Coastal Trading (Revitalising Australian Shipping) Regulation 2012

The Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the Regulation

The Regulation supplements the requirements provided in the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act) and the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (the Transitional Act). It prescribes the special circumstances where an energy security situation, as defined in the Act, occurs. It deals with information required to be included in applications for transitional general licences, temporary licences and emergency licences. These requirements are in addition to matters listed in the Act and the Transitional Act. Part 4 also provides for the kinds of emergency that would enable a person to apply for an emergency licence. Schedule 1 provides for the fees payable when applying for a licence under the Act.

Human rights implications

This Regulation does not engage any of the applicable rights or freedoms.

Conclusion

The Regulation is compatible with human rights as it does not raise any human rights issues.

Minister for Infrastructure and Transport, The Hon Anthony Albanese MP

ATTACHMENT

Details of the proposed Coastal Trading (Revitalising Australian Shipping) Regulation 2012

Part 1 – Introductory

Clause 1.1.1 – Name of regulation

The title of the regulation is the *Coastal Trading (Revitalising Australian Shipping) Regulation 2012*.

Clause 1.1.2 – Commencement

The regulation commences on 1 July 2012.

Clause 1.1.3 – Definitions

This clause provides that ‘Act’ means the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and ‘Transitional Act’ means the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012*.

Clause 1.1.4 – Special circumstances for energy security situation

The Act provides that a person may apply for an urgent energy security variation when an energy security situation exists. Such situation exists if:

- a vessel is used to undertake a voyage authorised by a temporary licence; and
- the vessel is carrying a liquid fuel product as defined in the Act; and
- there are special circumstances, of a kind prescribed by the regulations, requiring the vessel to load or unload a liquid fuel product at a port that is not authorised by the licence.

For purposes of paragraph 6(1A)(c) of the Act, the special circumstances are as follows:

- there is, or it is likely that there will be a shortfall in the supply of liquid fuel product;
- the shortfall is the result of one or more of the following unforeseen events:
 - i. a partial or total shutdown of a fuel refinery;
 - ii. the failure of a gas, electricity, water or steam supply to a fuel refinery or terminal;
 - iii. a shortfall in the supply of liquid fuel from overseas;
 - iv. fuel is found to be unsuitable to be used;
 - v. a severe weather event;
- the shortfall is having an adverse impact, or is likely to have an adverse impact, on the consumer interests, or the national economy or regional development.

In relation to paragraph (ii), the failure of gas, electricity, water or steam supply may not necessarily occur at a fuel refinery or terminal but at another location which impacts on the

supply of gas, electricity, water or steam to a fuel refinery or a terminal. In relation to paragraph (iv), what is contemplated is a situation where fuel was delivered but it was found to be unsuitable for use – for example, because it was contaminated during transport.

The Act requires that the special circumstances should be detailed in a statutory declaration as part of the application for an urgent variation because of an energy-related situation.

Part 4 – Licences

Division 4.1 – Transitional general licences

Clause 4.1.1 – Information for transitional general licence application

The Transitional Act provides for the grant of transitional general licences to persons who engage in trade in Australian coastal waters using foreign-registered vessels under licences issued under Part VI of the *Navigation Act 1912* and which are continued in force by the Transitional Act.

Section 10 of Part 3 of Schedule 2 of the Transitional Act provides, in part, for the requirements when applying for a transitional general licence. Paragraph 10(2)(c) of Part 3 of Schedule 2 to this Act allows the regulation to prescribe other information to be required in an application for a transitional general licence.

This clause requires that an application for a transitional general licence should also include the following:

- (a) statement about whether the owner of the vessel intends to register the vessel under the *Shipping Registration Act 1981*;
- (b) statement explaining what is preventing the vessel from being registered under the *Shipping Registration Act 1981*; and
- (c) information that evidences a statement made under paragraph (b).

In relation to paragraph (b) above, the application should provide information on the financial, business or legal constraints preventing the vessel from being registered in Australia. It should also explain what action is being, or will be, taken to move the vessel into Australian registration.

Clause 4.1.2 – Information for transitional general licence renewal

Section 15 of Part 3 of Schedule 2 to the Transitional Act provides for the requirements when applying for a renewal of transitional general licence. Paragraph 15(1)(d) of Part 3 of Schedule 2 of this Act allows the regulation to prescribe other information to be required in an application for renewal of a transitional general licence.

This clause requires the applicant to provide evidence in support of the statement under paragraph 15(1)(d) of Part 3 of Schedule 2 to the Transitional Act.

Division 4.2 – Temporary licences

Clause 4.2.1 – Information for temporary licence application

Section 28 of the Act provides for the requirements when applying for a temporary licence. Paragraph 28(2)(h) of the Act allows the regulation to require other information to be included in an application for a temporary licence. For purposes of paragraph 28(2)(h), the application should also include the following information:

- whether the cargo contains dangerous goods within the meaning of that term in the International Maritime Organization’s International Maritime Dangerous Goods Code, as may be updated from time to time;
- how the cargo is expected to be transported—for example, whether in containers, in bulk, whether there is risk of contamination between types of cargo etc.

The above requirements would be necessary to enable a general licence holder to determine whether it has the appropriate vessel to undertake the voyage specified in the temporary licence application.

Division 4.3 – Emergency licences

Clause 4.3.1 – Kinds of emergency for emergency licence application

Section 64 of the Act provides for the requirements when applying for an emergency licence. For purposes of subparagraph 64(2)(b)(i) of the Act, an emergency is an event that endangers, or threatens to endanger, life, property or the environment; that requires a significant and coordinated response; and involves any of the following events:

- cyclone;
- earthquake;
- flood, including a flash flood;
- landslide;
- mudslide;
- storm surge;
- thunderstorm;
- tornado;
- tsunami;
- wildfire.

Part 7 – Repeal

Clause 7.1.1 – Repeal of *Navigation (Coasting Trade) Regulations*

This clause repeals the *Navigation (Coasting Trade) Regulations 2007* and explains that this Part expires on 2 July 2012 as if it had been repealed by another legislative instrument.

Schedule 1 – Fees

The fee structure for licence and permit applications, which was in place between 2004 and 2012 under the old regulatory regime under the *Navigation Act 1912* and its implementing regulations, was as follows:

- Licence: \$22 (annual)
- Passenger Single Voyage Permit: \$22
- Cargo Single Voyage Permit: \$200 (ordinary) (single voyage)
- Cargo Single Voyage Permit: \$400 (urgent) (single voyage)
- Continuing Voyage Permit: \$400 (valid for 3 months).

In view of the Government's desire to assist industry in transitioning into the new regulatory regime, the Government decided to maintain the pre-1 July 2012 fee structure.

The following fees are required to be paid when applying for a licence or a variation of a licence under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*:

- Application for a general licence: \$110
- Application for a transitional general licence: \$110
- Application for a temporary licence: \$400
- Application fee for an emergency licence: \$400
- Application for a variation under Subdivision C of the Act – that is, a variation of matters authorised by temporary licences, whether energy-related or not: \$200
- Application for a variation under Subdivision D of the Act – that is, a variation of temporary licences to include new matters: \$400.

These fees basically maintain the fee structure for licence and permit applications under the *Navigation (Coasting Trade) Regulations 2007*. Maintaining the current fee structure will assist industry to transition to the new arrangements. For example, a general licence and a transitional general licence under the new licensing regime would be the equivalent of a licence under the *Navigation (Coasting Trade) Regulations 2007*. In arriving at the application fee of \$110, the old fee of \$22 (for a licence valid for one year) was multiplied by five (as an applicant would only be required to apply for a general licence once within a five-year period).

A temporary licence under the new licensing regime would be like the continuing voyage permit under the old regime. An applicant in the new regime actually gets to save on the application fee because a temporary licence is valid for 12 months while a continuing voyage permit was only valid for three months.

A variation of a temporary licence to include new matters enables a temporary licensed holder to obtain authorisation to undertake new voyages, subject to a minimum of five voyages. An application fee of \$400 is required to be paid. To obtain this authorisation under

the old regime, the relevant person would have applied for a continuing voyage permit which required an application fee of \$400. Furthermore, an applicant for a variation to add new matters to a temporary licence may be able to save under the new licensing regime as there is no ceiling to the number of voyages to be authorised and the period of validity of the authorisation is up to 12 months.