

## EXPLANATORY STATEMENT

Subject - *Coastal Trading (Revitalising Australian Shipping) Act 2012*  
Section 11 exemption for cruise vessels 2019

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Coastal Trading Act) regulates coastal trading by providing for licences to be granted to authorise vessels to engage in coastal trading as defined in section 7 of the Coastal Trading Act. A vessel is engaged in coastal trading if the vessel, for or in connection with a commercial activity takes on board passengers or cargo and carries the passengers or cargo:

- from a port in a State or Territory to another port in another State or Territory;
- from a port in a State or Territory to another port in the same State or Territory and continues to carry the passengers and cargo to a port in another State or Territory;
- from a port in a State or Territory to a port in the same State or Territory (on intra-state voyage) and the vessel is declared by the Minister under section 12 to be subject to the requirements of the Coastal Trading Act.

Using a vessel to engage in coastal trading without a licence may lead to a pecuniary penalty for the contravention of a civil penalty provision.

Section 11 of the Coastal Trading Act allows the Minister to direct that the Coastal Trading Act does not apply to a vessel or class of vessels; or a person or class of persons. An exemption under section 11 may be confined to one or more specific periods or voyages. The Coastal Trading Act provides that the Minister's direction to exempt is a legislative instrument.

This legislative instrument directs that the Coastal Trading Act does not apply to vessels in excess of 5000 gross tonnes which are:

- (a) capable of a speed of at least 15 knots;
- (b) capable of carrying at least 100 passengers; and
- (c) utilised wholly or primarily for the carriage of passengers between any ports in the Commonwealth or in the Territories, except between Victoria and Tasmania.

The exemption replaces the existing exemption, Federal Register of Legislative Instruments F2016L01308, which is due to expire on 31 December 2018. The instrument continues a longstanding exemption provided under subsection 286(6) of the *Navigation Act 1912* (the Navigation Act).

The exemption remains unchanged from that provided under subsection 286(6) of the Navigation Act, which permitted unlicensed vessels to engage in coastal trading without a

licence for the carriage of passengers between ports in the Commonwealth or in the Territories (other than between Victoria and Tasmania) on condition that the vessels are in excess of 5000 gross tonnes, used primarily or wholly for the carriage of passengers and capable of carrying at least 100 passengers at speeds in excess of 15 knots. The exemption has been in place for large cruise liners since 1998 to promote tourism activity.

Consultation with stakeholders on coastal shipping reform was undertaken from March to May 2017 via a discussion paper, where a new exemption was requested by a number of stakeholders.

The exemption commences on 1 January 2019 and ceases on 31 December 2023.

This exemption continues the existing exemption for five years to provide certainty for industry in planning and positioning of large cruise vessels. Consultation with the cruise industry on a long-term solution via parliamentary enactment will take place in 2019. It is anticipated that a legislative solution could be in place prior to the expiration of the exemption.

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

Authority: Section 11 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012*

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## 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) Act 2012 – Section 11 Exemption for cruise vessels 2019**

The legislative instrument 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 Legislative Instrument**

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act) regulates coastal trading between States and Territories within Australia by requiring the movement of cargo and/or passengers for or in connection with a commercial activity to be conducted by vessels authorised to do so by a licence issued under the Act.

The object of the Act is to provide a regulatory framework for coastal trading in Australia that promotes a viable shipping industry that contributes to the broader Australian economy.

The legislative instrument provides an exemption from the application of the Act for certain cruise ships. It prescribes that cruise ships greater than 5000 gross tonnes, capable of a speed greater than 15 knots and able to carry more than 100 passengers are exempt from the Act, provided the ship is utilised wholly or primarily for the carriage of passengers between any ports in the Commonwealth or in the Territories, except between Victoria and Tasmania. This means that ships of the kind detailed in the instrument are not required to apply for a licence under the Act when engaging in coastal trading.

The purpose of the exemption is to promote tourism activity within Australia, recognising that Australia does not currently have any Australian registered vessels in this category.

The legislative instrument does not make any substantive changes to the law as it has the same effect as the existing exemption, Federal Register of Legislative Instruments F2016L01308, due to expire on 31 December 2018. The instrument continues a longstanding exemption provided under subsection 286(6) of the Navigation Act 1912 (the Navigation Act). The exemption remains unchanged from that provided for under subsection 286(6) of the Navigation Act and, as such, does not engage any of the applicable rights and freedoms.

#### **Human Rights Implications**

This legislative instrument does not engage any of the applicable rights or freedoms referred to in the seven international Conventions listed in the *Human Rights (Parliamentary Scrutiny) Act 2011*, as it enables foreign-registered vessels to participate in Australia's coastal trade, providing for economic freedom.

#### **Conclusion**

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