

EXPLANATORY STATEMENT

Subject – *Coastal Trading (Revitalising Australian Shipping) Act 2012*
Section 11 exemption for voyages by container and roll-on roll-off
vessels to Western Australia until 31 May 2022

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the 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 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 or cargo to a port in another state or territory;
- From a port in a state or territory to another port in the same state or territory (an intra-state voyage) and the vessel is declared by the Minister under section 12 to be subject to the requirements of the 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 Act allows the Minister to direct that the Act does not apply to a vessel or class of vessels; or to a person or class of persons. An exemption under section 11 may be confined to one or more specific periods or voyages. The Act provides that the Minister's direction to exempt is a legislative instrument.

The legislative instrument directs that the Act does not apply to container and roll-on roll-off vessels undertaking any voyage from an Australian port carrying cargo to Western Australia until 31 May 2022.

The exemption is restricted to container and roll-on roll-off vessels, and does not include any voyage in the course of which a vessel takes on cargo or passengers from any port in the Commonwealth or in the Territories for unloading or disembarking at another such port, other than those undertaken by a container or roll-on roll-off vessel to a port in Western Australia.

The legislative instrument contains a condition that a person who is the owner or operator of a vessel to which this exemption applies must give to the Department a report containing information in respect of each voyage operated in reliance on this exemption.

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

Consultation external to the Australian Government has not been undertaken because the instrument is a replacement for an existing instrument which was designed to address extraordinary circumstances due to the rail line to Western Australia being affected by flooding. The replacement instrument extends the time period to allow for the rail connection to be repaired and normal operation to commence and to allow shipping to assist with clearing the subsequent backlog of goods that damage to the rail line has caused.

No vessel that holds a General Licence on 30 January 2022 has operated on these routes carrying a cargo of containers or roll-on roll-off cargo.

The exemption commences on 9 March 2022 and remains in force for vessels that load cargo destined for Western Australia on or before 31 May 2022.

Authority: Section 11 of the *Coastal Trading (Revitalising Australian Shipping) 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) Act 2012 – Exemption under section 11 relating to voyages by container and roll-on roll-off vessels to Western Australia

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, inter alia, promotes a viable shipping industry that contributes to the broader Australian economy.

The legislative instrument provides an exemption from the application of the Act, in accordance with section 11 of the Act, to all container and roll-on roll-off vessels undertaking any voyage for the carriage of cargo between any port in the Commonwealth or in the Territories to Western Australia until 31 May 2022. This does not include any voyage in the course of which a vessel takes on cargo or passengers from any port in the Commonwealth or in the Territories, other than by a container or roll-on roll-off vessel to a port in Western Australia. This means shippers using the vessels of the kind specified in the instrument are not required to apply for a licence under the Act.

The purpose of this exemption is to allow Western Australia to quickly access additional shipping services to replace rail freight capacity where rail operations have been affected by flood damage to rail lines, and to clear the backlog of goods to Western Australia caused by damage to the rail lines.

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*, due to the ability of 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.