

EXPLANATORY STATEMENT

Subject - *Coastal Trading (Revitalising Australian Shipping) Act 2012* - Section 11 exemption for cruise vessels 2023

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the CT 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 CT 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 CT 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.

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* - Section 11 exemption for cruise vessels 2023 directs that the CT Act does not apply to vessels in excess of 5,000 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 F2018L01523, which is due to expire on 31 December 2023. The instrument continues a longstanding exemption provided under subsection 286(6) of the *Navigation Act 1912* (the Navigation Act).

Background

An exemption to licencing for cruise vessels was introduced for the first time in 1998 under subsection 286(6) of the *Navigation Act 1912* to promote Australian tourism. Following the introduction of the CT Act, the first exemption for certain cruise vessels under this regime commenced on 1 January 2013 for a period of 5 years.

The exemption was extended in 2018 and at this time, the Senate Committee for Regulations and Ordinances (SCRO) stated that an ongoing exemption for cruise ships was a matter more appropriate for parliamentary enactment. In response to the Committee's comments,

the *Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017* was introduced into Parliament, however this lapsed on 1 July 2019. To provide consistency and certainty for the cruise industry, a replacement instrument was introduced on 1 January 2019 with a sunset date of 31 December 2023.

A review of the CT Act was announced in 2019, which included an undertaking to consult industry on a long-term solution for the exemption in line with the SCRO comments from 2018. Preliminary consultation commenced in 2019, however this was suspended in early 2020 due to competing priorities presented by the COVID-19 pandemic.

In 2022 the Strategic Fleet Taskforce was established to examine maritime regulatory frameworks to determine what, if any, changes are necessary to establish an Australian Strategic Fleet. At this time a decision was taken to not proceed with a review of the CT Act until the Taskforce's report and government response were finalised. On this basis, the *Coastal Trading (Revitalising Australian Shipping) Act 2012* - Section 11 exemption for cruise vessels 2023 will have effect for 12 months.

Consultation

In June 2023, consultation was undertaken with stakeholders (industry, cruise vessel operators and state tourism organisations) to seek their views on the 2019 exemption and the criteria determining which vessels it applies to. The majority of stakeholders indicated a preference for the exemption to be remade.

Many stakeholders submitted that if the instrument was to sunset without a new exemption being introduced, it would have significant operational, administrative and economic impacts on an industry which contributes \$5.2bn to the economy and supports around 18,000 Australian jobs as all vessels that meet the definition of coastal trading would be required to apply for a Temporary Licences. Stakeholders indicated that operating under the CT Act would be too burdensome and could result in some cruise operators withdrawing from the Australian market.

It was submitted that maintaining the exemption will continue to support *THRIVE 2030*, the Government's national strategy for the long-term sustainable growth of the visitor economy. Additionally, state and territory governments have developed cruise strategies to further grow domestic cruise visitation, including investing in infrastructure to facilitate increased cruise ship access.

The Office of Impact Assessment was consulted in the development of this instrument and an Impact Analysis exemption was granted on 28 September 2023 (reference OIA23-05763).

Authority: Section 11 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the CT Act) allows the Minister to direct that the CT 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 CT Act provides that the Minister's direction to exempt is a legislative instrument.

Statement of Compatibility with Human Rights

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

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This 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 CT 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 CT Act.

The object of the CT 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 5,000 gross tonnes, capable of a speed greater than 15 knots and able to carry more than 100 passengers are exempt from the CT 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 CT Act when engaging in coastal trading.

The purpose of the exemption is to promote tourism activity within Australia. The legislative instrument makes some minor changes to the existing exemption criteria from the 2019 exemption, which seeks to balance encouraging Australian industry with supporting growth in cruises generally. The instrument continues a longstanding exemption provided under subsection 286(6) of the *Navigation Act 1912* and 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.