

Tourism & Transport Forum (TTF)

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Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
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Dear Secretary

**SHIPPING LEGISLATION AMENDMENT BILL 2015
SUBMISSION**

I am writing on behalf of the Tourism & Transport Forum (TTF) to make a submission in relation to the Shipping Legislation Amendment Bill 2015.

By way of background, TTF is the peak national advocacy body for the tourism, transport and aviation sectors in Australia. A number of our members are either cruise shipping companies or have a strong interest in the success of cruise shipping because of the benefits it delivers to the broader tourism industry.

TTF has been active in advocating for reforms to coastal shipping legislation for a number of years and this submission focuses on the impact of the legislation on cruise shipping.

In summary, TTF supports the government's Shipping Legislation Amendment Bill 2015 but is seeking further clarity in relation to some aspects of the bill.

Cruise shipping has enjoyed significant growth in Australia and it now makes a major contribution to the Australian economy. A study commissioned by Cruise Lines International Association (CLIA) found that, in 2013, the cruise industry made an economic contribution of \$3.2 billion and employed 14,000 people across Australia.

The growth of cruise shipping in Australia has been facilitated by the federal government's decision to exempt large cruise ships (vessels of 5000 tonnes and carrying at least 100 passengers) from the Coastal Trading Act (CTA). This has ensured that, for large cruise ships, the industry has been able to operate competitively in Australian waters in what is a global market place.

TTF has, however, argued that the benefits of this exemption should be extended to smaller cruise ships. Expedition cruise shipping is a high-end and high-value part of the cruise ship market.

However expedition cruise ships have generally fallen below the threshold for the exemption available to larger cruise ships.

The effect has been obvious and Australia has largely missed out on the benefits of what is a growing part of the international market. As a result of the costs that flow from the operations of the Coastal Trading Act, very few international expedition cruise shipping companies operate in Australian waters.

For the tourism industry, this has meant little growth in a high-spending luxury component of the market. It has particularly disadvantaged regional coastal communities away from major ports which are the likely destinations for expedition cruise ships (particularly in remoter areas). Coastal Tasmanian, northern Australia and smaller ports in other states would be particular beneficiaries of an expansion of expedition cruise shipping. As a result, most state and territory governments have supported changes to the regulatory regime to support growth in this part of the market.

TTF believes that the government's proposed legislation will address the problems associated with the current Act and open up a new era of growth for expedition cruise shipping in Australian waters.

TTF believes that the operation of the ministerial exemption has been the most important precondition for the blossoming of cruise shipping in Australian waters. The bill simplifies the current regulatory regime and ensures that all cruise ships receive the benefits that have arisen as a result of the exemption provided to large cruise ships. Importantly, the permit structure proposed by the government regularises and extends the arrangements that were only previously available through a ministerial exemption. While successive governments have supported the exemption, it is not desirable that the industry rely on a discretionary and disallowable instrument.

TTF particularly supports the government's proposals to:

- Move to a simplified permit system for coastal shipping.
- Allow international cruise ships that operate in Australian waters for less than 183 days to operate on a more competitive regime for labour costs, consistent with international maritime standards. This will see Australia become a significantly more attractive destination for smaller cruise ship companies.
- Ensure that coastal shipping permits will protect vessels from importation under the Customs Act 1901.
- Remove the inherent uncertainty cruise ship companies face in relying on exemptions issued at the discretion of the minister.

Overall, the impact of the legislation on future investment and growth in cruise shipping is exceptionally positive.

TTF does however believe that further improvements can be made to the legislation.

Cruise shipping companies plan and sell itineraries two to three years in advance of their journeys. Companies therefore need considerable certainty for their operations in destination cities. An annual permit for cruise ship companies does not provide an optimal level of certainty. TTF believes that the legislation should provide for permits available for at least two years or a rolling permit system for ships primarily engaging in the movement of passengers.

Similarly, it is not immediately apparent in the bill how far in advance of operation a ship owner may apply for a permit. For cruise shipping companies, it is vital that they are able to secure permits before they finalise and sell journeys in Australian waters. TTF is seeking clarification that a cruise ship company could apply for a permit two or three years in advance of the commencement of that permit.

TTF is also concerned that international cruise ships visiting Australia as part of world itineraries may be required to obtain a permit if they collect or disembark passengers in Australia. Generally the number of passengers who join or leave ships in these circumstances is very small and it would provide a regulatory burden for cruise ship companies if they were required to obtain a permit. We

therefore suggest that the bill be amended to exclude cruise ships undertaking international journeys that board or disembark small numbers of passengers below a set threshold.

I have attached a copy of TTF's submission to the review of coastal shipping regulation undertaken by the government in 2014. While this submission is framed in the context of the options paper released by the government, it provides details of the importance of the cruise shipping sector and, more particularly, the problems that are faced by cruise ships that are not currently subject to the ministerial exemption.

I would be happy to assist the committee further with its deliberations on this important bill.

CRUISING TO PROSPERITY

Submission to the review of coastal shipping regulation in Australia

JUNE 2014



Membership of the Tourism & Transport Forum

The Tourism & Transport Forum (TTF) is the peak national advocacy body for the tourism, cruise shipping, aviation and transport sectors. It is a CEO forum representing the interests of 200 leading Australian institutions and corporations in the private and public sectors.

TTF uses its experience and networks to influence public policy outcomes and business practices, and to assist the delivery of major tourism, aviation and transport-related infrastructure projects. Our members' interests include tourism, accommodation, major events, aviation, land and maritime transport, investment, property development, finance, retail, hospitality and education.

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Executive Summary

Cruise shipping has become the most dynamic and fastest growing sector of the Australian visitor economy. It is an industry that is making a contribution to cities and port communities around the Australian coastline as well as to the broader Australian economy.

In the last five years, Australian cruising has seen a 130 per cent increase in passenger numbers¹. In 2012-13, 43 cruise ships visited 30 Australian ports on 692 occasions, carrying 62,000 passengers and 27,000 crew.² A 2012 report by Deloitte found that the total economic contribution of the market was \$830 million with strong expectations of continued growth³. A more recent report from Cruise Downunder estimated total output of the Australian cruise ship industry at \$2.06 billion in 2012-13, a 20.6% increase over the previous financial year.⁴

Cruise shipping brings benefits to local economies through both the direct spending of passengers and crew or through the supply chain which includes the provisioning of ships with Australian produce. These benefits are felt both in capital cities and in regional ports visited by cruise ships where the economic benefits can be significant.

As the peak national industry association representing the tourism and transport sectors, the Tourism & Transport Forum (TTF) has been a strong advocate for policies and infrastructure that will facilitate further growth in the cruise ship industry and maximise the on-shore economic benefits of the sector.

The extraordinary growth in cruise shipping (globally, Australia has recorded the second highest growth in passenger numbers over the last five years) reflects a range of factors, including product innovation, a repositioning of the perception of cruising, improved portside infrastructure and, importantly, regulatory support provided by the federal government.

The regulatory and licensing regime for coastal shipping has a direct and important impact on the cruise sector.

Specifically, the federal government's decision to exempt large cruise ships (vessels over 5000 tonnes and carrying at least 100 passengers) from the licensing regime of the Coastal Trading Act has facilitated the growth of this segment of the market. In a competitive global environment, the growth in Australian cruise shipping would not have occurred without this exemption.

The exemption from the Coastal Trading Act was introduced by the Australian government in 1997 as an incentive for cruise ships to visit Australia, recognising the economic benefits that flow from the sector to the economy.

The exemption has been phenomenally successful in achieving its goals and has allowed a major expansion of "domestic cruising" to cities and towns around the Australian coastline.

¹ CLIA, *State of the Cruise Update* released by Cruise Lines International Association as reported in Carnival Australia media release, 17 January 2014.

² Cruise Downunder, *Economic impact assessment of the cruise shipping industry in Australia 2012-13, Executive Summary* September 2013

³ Deloitte Access Economics, *The economic contribution of the cruise sector to Australia* 29 February 2012.

⁴ Cruise Downunder, *ibid*

While large cruise ships carry the majority of passengers, internationally the market is also served by smaller high-end vessels, often referred to as expedition cruise ships. Their size allows these ships to travel to smaller ports and also locations that are hard to access by land.

In contrast to the general upward trend in Australian cruising, expedition cruise shipping is not enjoying the growth seen elsewhere in the world. Unlike large cruise ships, these smaller vessels have not been exempt from the Coastal Trading Act as they fall under the 5000 tonne threshold.

The result is that international operators of the smaller expedition cruisers have been reluctant to expand their presence in Australian waters (and in some cases, reduced their Australian offering) leaving the market to the very small Australian-based industry. While the licensing system has served to protect the two existing Australian-based operators from international competition, the failure to exempt expedition cruise shipping has meant a stagnant market that has not brought the benefits that have been seen in the larger cruise ship market.

Australia, particularly regional coastal towns and cities, are therefore missing out on millions of dollars of visitor expenditure from high-yield expedition cruise ship passengers because of the impacts of the Coastal Trading Act.

TTF therefore recommends that the outcome of the review of the Coastal Trading Act should, if a licensing system is maintained:

1. continue to exempt large cruise ships from the licensing regime but move to a long-term (preferably permanent) exemption to provide greater certainty; and
2. extend the exemption to all cruise ships as defined by the International Maritime Organisation (that is, ships over 500 tonnes) to unlock growth in the expedition cruise ship market.

The government has canvassed two options that would abolish the requirement for ships, both Australian and foreign-flagged, to obtain a licence or temporary licence.

In this regard, TTF believes that option 2 in the government's options paper best achieves a regulatory environment that will allow the cruise sector to grow and contribute to the broader economy. Option 2 will, however, only deliver these outcomes if the current benefits of the large cruise ship exemption in relation to employment conditions for foreign crews is maintained and extended to all cruise ships. Curtailing current arrangements in relation to foreign crews would have a devastating effect on the cruise shipping industry in Australia and reverse all that has been achieved over the last decade.

Background

The Australian cruise ship sector is one of the great success stories of the Australian tourism industry. During a period in which the broader tourism industry achieved only modest growth, the cruise ship sector has expanded dramatically. While this growth has come off a low base, it shows no signs of abating. Deloitte predicts that the industry will grow at 7 per cent per annum in the period to 2020 while the cruise tourism contribution to GDP will double. By 2020 Deloitte estimates that the total value added by the sector to the Australian economy will be \$2.28 billion.⁵

The sector is broadly typified by the large cruise ship market dominated by Carnival Corporation (with close to an 80 per cent market share) and Royal Caribbean International. The industry is served by seasonal vessels deployed in Australia for three to six months of the year, round-the-world cruises, and an increasing number of home-ported vessels from P&O Cruises, Princess Cruises and Carnival Cruise Lines (for example, Carnival recently announced that an additional two ships would join its ten ships already home-ported in Australia in November 2015).

Australia is also served by a smaller expedition cruise ship market. While carrying fewer passengers, their customer base is at the top end of the market and therefore a high-value component of the tourism industry.

The smaller expedition market is served by two Australian operators that own a combined total of four vessels ranging in size from two 35 metre catamarans carrying up to 50 passengers to the 1800 tonne *Oceanic Discoverer* which carries up to 72 passengers. The two Australian operators offer itineraries in northern Australia and to destinations in the Pacific. International expedition cruise ship operators also have some presence in Australia (for example, Lindblad Expeditions Australia), offering itineraries on generally larger ships at the top end of the market. However, as this submission will argue, this segment of the market has been constrained by the operation of the Coastal Trading Act.

⁵ Deloitte Access Economics, *The economic contribution of the cruise sector to Australia* 29 February 2012.

Cruise Shipping and the Coastal Trading Act

Both freight and passenger shipping in Australian waters are regulated by the Coastal Trading Act. The Act requires all ships to meet licensing requirements, unless an exemption is issued by the minister.

A ministerial exemption has been granted to cruise ships over a certain size (those over 5000 gross tonnes carrying at least 100 passengers). This has facilitated the growth of cruise shipping in Australia at this end of the market.

The exemption recognises the different labour force structure of cruise and cargo ships. While cargo ships may operate with a crew of 20, cruise ships can carry up to 700 staff. This means that the cost structure of operating cruise ships is substantially different to cargo ships and why the exemption has been so important in ensuring the competitiveness of Australia as a market for the industry.

However smaller cruise ships – principally those serving the expedition cruise ship sector – are not exempt from the requirements of the Act as they generally fall under the 5000 tonne threshold.

This means that, unlike larger cruise vessels, foreign-flagged expedition cruise ships require temporary licences to operate in Australian coastal waters despite similar cost structures in relation to crew and very high crew to passenger ratios.

For foreign-flagged expedition cruise ship companies this has three negative impacts.

First, to obtain a temporary licence under the Coastal Trading Act a foreign-flagged cruise ship must demonstrate that it is offering a product the domestic market is not providing. By its nature, this requirement is designed to reduce competition in a market in which there are only two Australian operators.

Second, a temporary licence holder, as a condition of that licence, must undertake five voyages in Australian coastal waters during the 12-month operation of the licence. For international operators, this is an impractical requirement as their ships are involved in offering itineraries around the world.

Third and most importantly, temporary licence holders must meet Australian labour market rules and wage structures for their foreign crew. This imposes labour costs that make the operation of Australian itineraries uncompetitive with alternative itineraries in other regions. It also imposes a cost burden not faced by larger cruise ships.

The adverse impact of the current regulatory regime on expedition cruise shipping

The Coastal Trading Act has constrained the growth of the lucrative expedition cruise shipping sector.

International expedition cruise ship operators are not entering the Australian market, despite their desire to expand in Australia, are instead focussing on growing the sector in other parts of the world.

The contrast in the growth of large cruise shipping, with the benefits of an exemption from the licensing requirements of the Act, and the stagnation of expedition cruise shipping is telling.

The current regulatory regime is designed to offer protection to the Australian expedition cruise ship market. However, this 'market' consists of just two operators owning four Australian-flagged ships with a geographic footprint limited to northern Australia.

TTF contends that an equally important policy goal is to expand the size of the expedition cruise ship sector. This will deliver increased economic benefits to Australia, particularly in regional areas. An expansion of expedition cruise shipping will also bring benefits to port communities in regions not currently served by Australian operators.

Ultimately, the current regulatory regime is disadvantaging remote and regional areas which are not able to benefit from the high-yielding guests who would travel on small vessels to these areas, or from the peripheral trade generated by these vessels in these regions. Not only do these high-yielding guests spend money in these remote and regional communities while touring from the ship, they tend to also arrange pre- and post-cruise extensions in the area. The cruise lines also purchase stores, provisions and bunkers locally, and utilise local tour operators. TTF is also aware of the interest of cruise ship operators to package expedition cruises with other 'on-land' touring opportunities.

Case Study: The impact of the Act on the expedition cruise ship, *National Geographic Orion*

Lindblad Expeditions is a world-renowned cruise ship company that acquired the Australian-based operator, Orion Cruises. Lindblad operates ten international expedition vessels worldwide. It has one vessel based in the region and would expand its operations with the right conditions.

Instead, the cost impacts of the licensing regime mean that the *Orion* is now operating less in Australia. It is uneconomic for Lindblad to expand its itineraries and the number of vessels it has in Australian waters, and Lindblad is now taking the *Orion* to Singapore for dry-docking.

For example, in 2011 the *Orion*, concluded a NZ and sub-Antarctic cruise in Tasmania. The *Orion* had planned to include a Tasmanian coastal itinerary as part of the tour but because of the costs associated with licensing conditions it travelled empty to Sydney for dry-dock.

This was due to the fact that, as a foreign-flagged passenger vessel under 5000grt, *Orion* is not permitted to carry guests along the Tasmanian coast unless it has a temporary licence under the Act (a requirement from which larger cruise ships are exempt). This passenger-less journey added considerably to the cost of dry-docking and in 2013 *Orion* was instead dry-docked for the first time in Singapore rather than in an Australian dry-dock, as it has been since 2005.

When *Orion* was introduced to the region in 2005, its deployment was predominantly Australian focussed, with Tasmanian, East Coast, Barrier Reef, Top End, and Kimberley itineraries. With the changes to the ministerial guidelines, the related extension of Fair Work Australia rules to non-exempt vessels, and the new Coastal Trading regulations, the government has introduced onerous hurdles, making it increasingly difficult for a small ship operator to continue to operate in this region. These restrictions have made it challenging to offer successful and profitable Australian-based itineraries and in 2014 *Orion* will spend the least time offering Australian destinations since it arrived in this region in 2005.

Ports that will benefit from an expanded cruise ship sector.



Reforming the Coastal Trading Act

TTF welcomes the federal government's decision to review the Coastal Trading Act. The review provides a timely opportunity to improve the regulatory environment for the cruise ship sector.

The government's options paper outlines three possible options for reforming the regulatory environment for shipping in coastal waters.

TTF starts from the premise that the ministerial exemption provided to large cruise ships has been critical to the growth of this sector. TTF believes that, should a licensing system continue, the exemption for cruise ships should be maintained and extended to include all cruise ships over 500 tonnes. This is consistent with the International Maritime Organisation's definition of a cruise ship.

For the reasons outlined in this submission, an extension of the exemption to all cruise ships will encourage international expedition cruise ship operators into the Australian market. Those operators will bring greater product diversity, the benefits of their global marketing and distribution channels, and an established clientele. An expanded expedition cruise ship market will create economic value and employment in both northern Australia and those regions around the coast are not served by the two Australian-based operators.

The current ministerial exemption covers the five-year period from January 2013 to December 2017. TTF supported the decision of the former minister to issue an exemption for more than a one-year period. Nonetheless, ministerial exemptions under the Act remain at the discretion of the minister and subject to disallowance by the parliament. This provides a degree of uncertainty for cruise ship operators as ship acquisition, itineraries, and decisions about where ships are ported are planned many years in advance.

TTF therefore recommends that the Act be amended so as to require that ministerial exemptions be issued for periods of no less than ten years or made permanent.

The maintenance and extension of the current ministerial exemption presupposes that coastal shipping will continue to operate within a licensing regime.

The government's options paper canvasses two approaches that would remove all regulation of access to coastal trading.

TTF does not support option 1 as this would remove essential arrangements in relation to customs and immigration, and potentially reinstate the applicability of Australian labour laws to foreign-flagged large cruise ships.

Option 2 best achieves a regulatory environment that will allow the cruise sector to grow and contribute to the broader economy. Option 2 will, however, only deliver these outcomes if the current benefits of the large cruise ship exemption in relation to employment conditions for foreign crews is maintained and extended to all cruise ships.

The consequences of not maintaining the exemption would be severe. In a competitive international market it is difficult to see how Australia could maintain a viable cruise ship industry without the exemption in place. Australian tourism and the broader economy would lose the benefits that the rapid growth of cruise shipping has made possible. In short, TTF believes that any reforms that did not maintain the current benefits of the exemption would be devastating for the future of the cruise ship sector in Australia.

TTF believes that if the government does adopt option 2, the removal of regulation of access to coastal trading should extend to both freight and passenger ships. It would be an artificial and arbitrary distinction to require licensing for cruise ships and not for cargo vessels and would only serve to limit the growth of this important part of the visitor economy.

TTF recommendations:

1. That, if the government maintains a licensing system for coastal trading, the ministerial exemption for cruise ships be maintained and broadened to include ships over 500 tonnes.
2. That the Act require exemptions to be issued for longer periods (preferably permanently) to provide greater certainty to the industry.
3. That if the government deregulates coastal shipping it adopts option 2 in its options paper and ensure that foreign-flagged cruise ships are exempt from the provisions of the Fair Work Act.