

# Chapter 5

## Operation of Temporary Licence provisions

5.1 As mentioned in chapter four, the majority of evidence gathered by the committee related to the Coastal Trading (Revitalising Australian Shipping) Bill 2012 (CT Bill), and in particular the provisions relating to temporary licences (TLs).

5.2 This chapter discusses concerns raised by submitters on the impact of the proposed licensing regime on specific aspects of shippers' enterprises including:

- accommodating urgent variations and emergencies;
- publishing general licence (GL) details to facilitate communication with TL holders;
- consideration of health and safety standards when a GL nominates for trade;
- exemptions for certain classes of vessels when there is no Australian registered vessel in that class; and
- protecting integrated supply chains and avoiding voyage segmentation.

### Urgent variations and emergencies

5.3 A number of submitters, in particular members of the petroleum industry, recommended amendments to the CT bill to accommodate unforeseen circumstances in the supply chain. The industry suggested this could be avoided by increasing the flexibility of variation provisions or extending emergency licences (ELs) to the maintenance of supplies for commercial purposes.

#### *Urgent variations*

5.4 In response to requests from industry to 'provide sufficient flexibility to accommodate late scheduling changes or other upstream/downstream events that may occur in the supply chain', the CT Bill now provides for expedited processing of two categories of variations:

- variation of matters already authorised by TLs such as voyage details to be made within two business days (clauses 43–49); and
- variation of licences to include additional voyages to be made within seven business days (clauses 50–58).

5.5 GL holders will be able to nominate for trade in both categories.<sup>1</sup>

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1 Department of Infrastructure and Transport, *Submission 2*, p. 11.

5.6 Submitters from the petroleum industry argued that these should go further, and that an urgent variation provision should be included in circumstances where a vessel has already departed, especially in the maintenance of liquid fuel supply security.<sup>2</sup> In addition, Caltex argued that urgent approvals should be accommodated on non-business days.<sup>3</sup> The Australian Institute of Petroleum (AIP) commented:

The variations provisions of the bill have delivered a degree of flexibility for temporary licence holders. Unfortunately, the flexibility only allows prevoyage changes. The variation process will impose red tape and administrative burdens that will not facilitate the policy objectives of the bill and may require the specification of low-probability voyages in order to meet the five-voyage requirement. Most importantly, it will not permit the industry to make voyage changes on the water or efficiently respond to unplanned urgent supply situations.<sup>4</sup>

### ***Emergency licences for commercial activities***

5.7 Clauses 64–75 of the CT Bill outline the provisions for ELs including the applications, variations, decisions, granting, issuing, refusals and conditions of ELs. No specific definition is provided on what constitutes an emergency. However Subclause 64(2) sets out the details that must be included in an EL application, including that the application must specify the emergency is 'a kind prescribed by the regulations':

- (2) The application must:
  - (a) be in writing; and
  - (b) specify:
    - (i) details of the emergency, being an emergency of a kind prescribed by the regulations; and
    - (ii) the number of voyages for which the applicant is seeking the licence (if known); and
    - (iii) the number of passengers expected to be carried (if any); and
    - (iv) the kinds and volume of cargo expected to be carried (if any) and the shipper of the cargo; and
    - (v) the ports at which the passengers or cargo are expected to be taken on board (if known); and

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2 BP Australia Pty Ltd, *Submission 11*, p. 2; Australian Institute of Petroleum, *Submission 12*, p. 7; Mobil Oil Australia Pty Ltd, *Submission 23*, p. 3.

3 Caltex Australia Limited, *Submission 16*, p. 9.

4 Mr Paul Barrett, Deputy Executive Director, Australian Institute of Petroleum, *Committee Hansard*, 15 May 2012, p. 34.

(vi) the ports at which the passengers are expected to disembark or the cargo is expected to be unloaded (if known); and

(c) set out the reasons why the voyages cannot be undertaken by a vessel authorised to be used to engage in coastal trading under a general licence.

5.8 The Explanatory Memorandum for the CT bill states that 'the regulations will prescribe the emergency situations for purposes of section 64; examples of an emergency would include flooding, bushfire or other natural disaster'.<sup>5</sup>

5.9 As a possible alternative to amendments for urgent variations of TLs, members of the petroleum industry asserted that ELs should be provided for certain commercial activities.<sup>6</sup> The AIP stated:

...we propose that emergency licences be granted on the criterion of liquid fuel supply reliability and that this be codified in the legislation. This requirement is not recognised in the current bill, though it does feature in the ministerial guidelines under the current legislative regime.

AIP further propose that these emergency licences be automatically granted upon notification to the department, based upon the need for urgency. Alternatively, more flexibility could be provided around the requirements for securing a temporary licence and for seeking variations to a temporary licence, including changes and diversions that may need to be made after an approved vessel movement has commenced, in order to minimise the risk of fuel supply disruptions.<sup>7</sup>

5.10 The *Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping* state that issuing of a permit will consider the public interest which includes:

...having regard to a requirement for maintenance of supplies, production or service that could not be met by the use of licensed ships...<sup>8</sup>

5.11 The Australian Shipowners Association (ASA) also recommended that ELs should 'be made available for commercial activities in genuine emergency situations, which should include the GL check occurring prior to the application being made'.<sup>9</sup> It

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5 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, p. 35.

6 Australian Shipowners Association, *Submission 7*, p. 10; Caltex Australia Limited, *Submission 16*, p. 11; Mobil Oil Australia Pty Ltd, *Submission 23*, p. 3.

7 Mr Paul Barrett, Deputy Executive Director, Australian Institute of Petroleum Ltd, *Committee Hansard*, 15 May 2012, p. 34.

8 Department of Infrastructure and Transport, 'Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping', 21 December 2009, paragraph 42.

9 Australian Shipowners Association, *Submission 7*, p. 3.

suggested that 'on balance the emergency licence provisions are a little too tight to provide the flexibility that many different cargo types might need'.<sup>10</sup> The ASA outlined in its submission:

While every attempt to accommodate urgent voyages has been made in the draft Bill, and the variation process being able to be expedited to 2 days is supported and appreciated, there will be circumstances where the approval process for a variation will not be rapid enough to meet every need.

Throughout the consultation process the position has been maintained by the Government that ELs are only available for humanitarian disaster / relief etc.

ASA is of the view that it is entirely foreseeable that a trading ship with commercial cargo may be required in "emergency" circumstances (such as an unplanned shutdown of a plant, delivery of contaminated product (thereby requiring immediate replacement), inability of contracted ship to deliver goods, etc). Such circumstances would necessarily be limited to the need to move cargo within a 2 day window (otherwise a TL could be used via a 'matters authorised' variation which includes the due process that goes with that).

Clearly in those circumstances the genuine nature of the emergency would need to be articulated, such as the impact on the community of a 2 business day delay. It is proposed that in order to ensure the integrity of the objects of the Bill are upheld, in such circumstances the EL applicant will include in their application a statement regarding the GL vessel checks that they have done prior to seeking an EL. That way, if there is a GL ship available (and suitable) it will have been considered without the need for a 'nomination' process that takes up valuable time in an emergency situation. It is expected that the standard appeals and penalty provisions would apply.

The criteria for grant of an EL could be dealt with in the regulations that need to be developed to define an emergency situation.<sup>11</sup>

5.12 The Department of Infrastructure and Transport (the department) has highlighted that it is currently examining the concerns raised by the petroleum industry in relation to fuel security, and intends to provide further advice before the bills are debated in parliament:

While the Department considers that many of the concerns raised by the petroleum industry can be effectively managed within the provisions of the Bill before Parliament, further consideration is being given to how specific "energy security/emergency" situations may be better addressed. In this regard, the Department is consulting with the Department of Resources, Energy and Tourism. Final advice will be provided to the Minister for

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10 Ms Teresa Lloyd, Australian Shipowners Association, *Committee Hansard*, 15 May 2012, p. 70.

11 Australian Shipowners Association, *Submission 7*, p. 10.

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Infrastructure and Transport before the resumption of the second reading debate.<sup>12</sup>

### ***Amendments in the House of Representatives***

5.13 The Hon. Anthony Albanese, MP, Minister for Infrastructure and Transport submitted 19 government amendments to the coastal trading bill to the House of Representatives on 31 May 2012. These 19 amendments were passed. He told the parliament that the amendments were in response to this inquiry, and the inquiry by the House of Representatives Standing Committee on Infrastructure and Communications.<sup>13</sup>

5.14 In response to concerns by the petroleum industry on the need to make urgent variations where there is a threat to Australia's energy security, the Minister told the parliament that:

To address this legitimate concern, the government is moving to amend the bill to include an expedited variation process for temporary licences in circumstances in which a vessel is loaded and about to sail or has already sailed and is required due to a defined energy incident to load or unload a liquid fuel product at a port not authorised by the licence. The variation will be decided within 24 hours from receipt of the application and would only apply in special circumstances to be prescribed in the regulations. These circumstances would include incidents such as unscheduled refinery outages.<sup>14</sup>

### **Promoting negotiations between temporary and general licensees**

5.15 Some members of the petroleum industry suggested that GL holders should be required to provide information as per the requirement for TL holders for publication.<sup>15</sup> Caltex and the ASA advocated a model of "conversation" rather than "contest" between temporary and general licensees.

5.16 Caltex argued that '[t]he Bill imposes requirements and restrictions on how TL and GL holders engage with each other post-application rather than promoting and facilitating negotiations prior to applications'. It argued that '[t]his creates a level of

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12 Department of Infrastructure and Transport, *Submission 2.1 to the House of Representatives Standing Committee on Infrastructure and Communications*, pp 7–8.

13 *House of Representatives Hansard*, pp 35–36; Votes and Proceedings, House of Representatives, p. 1539; Supplementary Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012.

14 *House of Representatives Hansard*, p. 36.

15 Australian Institute of Petroleum, *Submission 12*, p. 6; Caltex Australia Limited, *Submission 16*, pp 14–15.

uncertainty and operational risk for TL applicants'.<sup>16</sup> Mr Frank Topham, Government Affairs and Media Manager for Caltex, told the committee:

...we propose that the bill be amended to require that general licence vessels that wish to contest coastal voyages should register their interest, including details of the vessel, the cargo type and availability. This provides information that could then be drawn upon by other parts of the bill, suitably amended.<sup>17</sup>

5.17 The ASA promoted a model of "conversation" between licence holders, rather than "contest":

We would like to change the regime from one of a contest, which creates a very combative environment—that is, a general licence holder is to "contest" a temporary licence application. It would be much more workable if the temporary licence applicant sought out the general licence holders before they put their application in and had a reasonable business-to-business conversation, as opposed to waiting for a contest.

...

The way that the Coastal Trading Bill is set up, and certainly the way the permit system works now, is that, if and when a ship that is not a licensed ship is sought, they must do a general licence check. So they must check to see if there is an Australian ship available and, if there is, then I guess a contest ensues. Some operators use that model. Some operators actually go out to the market before they seek a permit to see if there is an Australian ship that is available to do the work that they want done, because they understand that the way the regime is structured is that, if there is an Australian ship, that Australian ship should have, if you like, preferential access to moving that cargo. The way the new bill is structured—and certainly the way it is being talked about—is very much the other way of doing business, which is that you go and ask for permission to use a foreign ship and then fight the contest later if a general licence ship happens to pop up.<sup>18</sup>

5.18 The ASA offered a specific recommendation in its submission:

In order that TL applicants can undertake suitable checks prior to making an application for a TL it would be helpful if a register of GL holders was publically available. This should be a function of the Department responsible for issuing GLs. Such a list exists under the current coasting trading regime and we would expect that it would continue. It would be necessary that this list was up to date at all times and include an appropriate level of detail so as to allow potential TL and Emergency Licence (EL)

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16 Caltex Australia Limited, *Submission 16*, p. 15.

17 *Committee Hansard*, 15 May 2012, p. 35.

18 Ms Teresa Lloyd, Executive Director, Australian Shipowners Association, *Committee Hansard*, 15 May 2012, pp 66, 67.

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applicants to understand certain specifics of the GL ships available (type of ship, capacity, company contact details, etc).<sup>19</sup>

5.19 Caltex Australia specified that it would be beneficial if 'general licence vessels that wish to contest coastal voyages... register their interest, including details of the vessel, the cargo type and availability'.<sup>20</sup>

5.20 Subclause 16(2) of the CT bill stipulates the detail of GLs that will be published on the department's website. This does not include details on the type of vessel or cargo type, or its availability. It does, however, include 'any other information prescribed by the regulations':

If the Minister grants an application for a general licence, including renewal of a general licence, the Minister must cause the following information to be published on the Department's website:

- (a) the general licence number;
- (b) the holder of the licence;
- (c) the holder's business name and business address;
- (d) the vessel to which the licence relates;
- (e) the period of the licence;
- (f) any other information prescribed by the regulations.

5.21 Subclause 35(2) stipulates the augmented details a TL will have published on the department's website in comparison to a GL:

If the Minister grants an application for a temporary licence, the Minister must cause the following information to be published on the Department's website:

- (a) the temporary licence number;
- (b) the day the licence commences;
- (c) the number of voyages authorised by the licence;
- (d) the loading dates;
- (e) the number of passengers (if any) authorised to be carried under the licence;
- (f) the kinds and volume of cargo (if any) authorised to be carried under the licence;
- (g) the ports at which the passengers or cargo will be taken on board;
- (h) the ports at which the passengers will disembark or the cargo will be unloaded;

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19 Australian Shipowners Association, *Submission 7*, p. 9.

20 Mr Frank Topham, Government Affairs and Media Manager, Caltex Australia, *Committee Hansard*, 15 May 2012, p. 35.

- (i) any other information prescribed by the regulations.

### ***Committee view***

5.22 The committee sees much merit in providing ample opportunity for business to business "conversation" between general and temporary licensees to further facilitate opportunities for GL holders to nominate for trade. In addition, the ability for temporary licensees to have these negotiations prior to applying for a voyage may provide increased certainty for shippers.

### **Consideration of health and safety standards**

5.23 Subclause 34(1) of the Coastal Trading (Revitalising Australian Shipping) Bill 2012 outlines that the Minister decides on a TL application by granting or refusing the application. Subclauses 34(2) and (3) detail what the Minister may have regard to when making a decision on a TL application:

(2) In deciding an application, the Minister may have regard to the following (whether or not the Minister receives a notice in response in relation to the application):

- (a) whether the applicant has previously held, or applied for, a temporary licence;
- (b) whether the applicant has previously held a licence that was cancelled;
- (c) whether the applicant has been issued with an infringement notice under this Act;
- (d) any written comments received by the Minister in relation to the application;
- (e) any report given to the Department by the applicant under section 62;
- (f) the object of this Act;
- (g) any other matters the Minister thinks relevant.

(3) If the Minister receives one or more notices in response in relation to an application, the Minister must have regard to the following in deciding the application:

- (a) the outcome of negotiations, as notified by the applicant under paragraph 32(2)(b);
- (b) whether, and to what extent, the vessel authorised by the holder's general licence is equipped to carry the passengers or cargo specified in the application;
- (c) whether those passengers or cargo can be carried in a timely manner;

(d) if the application relates to the carriage of cargo—the reasonable requirements of a shipper of the kind of cargo specified in the application.<sup>21</sup>

5.24 A number of submitters asserted that, when deciding on a TL application, the Minister should go beyond considering freight rate and volume and include the needs of the shipper and the standards of the vessel.<sup>22</sup>

5.25 Sucrogen Australia submitted that it had particular quality requirements for the vessels it uses, and the CT bill does not adequately enforce these standards in GL vessels that may nominate for Sucrogen shipments:

We have a food-grade product that moves. We have very strict quality requirements around that. It goes into a range of products—pharmaceuticals, mouthwash, cough syrups, tablets, beverages—so we are very, very careful about the quality control we have in place through our supply chain. We do not see within the current legislation that there is provision for those requirements to be maintained. If there were a locally flagged vessel, for example, that had space, we would be forced to use it regardless of whether it had the right lining or previous-cargo provisions.

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There is no Australian ship at the moment which can do it, but, if someone wanted to bring an Australian chemical tanker in that had an epoxy lining, for example, which we do not use, we would be forced to use that ship or not ship at all, and that is a quality standard that is below what we currently do. It is not something that we will entertain.<sup>23</sup>

5.26 Some submitters argued that GL vessels should be required to demonstrate minimum safety requirements as per international standards, and shippers should have the right to refuse vessels that do not meet these standards.<sup>24</sup> The AIP commented:

AIP and its member companies acknowledge that there may at some stage in the future be a General Licence application for a petroleum products vessel. We strongly request that GL holders are required to continue to meet minimum safety requirements as required by individual product handling companies in order to maintain the registration of vessels (under the Australian Register of Shipping) that meet international standards for safety and construction.

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21 Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012, pp 25–26.

22 Australian Institute of Petroleum Ltd, *Submission 12*, p. 6; CSR Limited, *Submission 13*, p. 2; Sucrogen Australia Pty Ltd, *Submission 14*, p. 3; Sugar Australia, *Submission 21*, p. 4.

23 Mr Garry Mulvay, Executive General Manager, Sucrogen BioEthanol Pty Ltd, *Committee Hansard*, 15 May 2012, p. 15.

24 Australian Institute of Petroleum, *Submission 12*, p. 6; CSR Limited, *Submission 13*, p. 2; Caltex Australia Limited, *Submission 16*, p. 9.

Under this scenario shippers should have the right to refuse vessels that do not meet individual company safety requirements. We acknowledge that s.32 (4) requires that applications by a GL holder must have regard to the requirements of the shipper of the cargo, however, we consider that to ensure safety standards are maintained, s.32(4) should be strengthened to say "must comply with" rather than "have regard to".

Safety and environmental protection are paramount concerns for the Australian downstream petroleum industry and we would consider it to be counter-productive for a diminution of safety requirements by potentially allowing lower safety standards for any Australian registered vessel.<sup>25</sup>

### ***Committee view***

5.27 The committee believes that paragraph 34(3)(a) of the CT bill is adequate to consider the unique needs of shippers, including particular health and safety standards.

### **Exemptions for certain vessels or persons**

5.28 Subclause 11(1) of the Coastal Trading (Revitalising Australian Shipping) Bill 2012 outlines that the Minister may direct, by a legislative instrument, that the bill will not apply to a vessel or class of vessels; or a person or class of persons. Subclause 11(2) details:

An exemption under subsection (1) may be confined to one or both of the following:

- (a) one or more specified periods;
- (b) one or more specified voyages.<sup>26</sup>

5.29 A number of submitters conveyed that a specific exemption should be included in the CT bill where there is no Australian registered vessel in that vessel class.<sup>27</sup> An exemption from certain TL requirements, for example, would allow a shipper to have less restrictions in its access to the coast until an Australian-flagged vessel in the required class became available. Caltex Australia commented:

...we recommend that the bill be amended so that, where there are no vessels of a particular capacity and type on the general licence register, then no temporary licence would be required to carry a cargo. In practice, crude oil cargoes would be exempt, as there are no general licence vessels on the coast. Petroleum product cargoes would be exempt if, as is likely, those

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25 Australian Institute of Petroleum, *Submission 12*, p. 6.

26 Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012, pp 11–12.

27 Australian Institute of Petroleum, *Submission 12*, p. 5; Sucrogen Australia Pty Ltd, *Submission 14*, p. 3; Caltex Australia Limited, *Submission 16*, p. 7; Mobil Oil Australia Pty Ltd, *Submission 23*, pp 2–3.

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vessels with general licences did not place themselves on the availability register.<sup>28</sup>

5.30 Mr Paul Barrett, Deputy Executive Director of the AIP reiterated these concerns. He added that if an exemption was provided its members would be willing to continue to report voyage details to improve transparency for potential ship investors:

...we propose that the petroleum shipping sector be exempt from the proposed legislation because we consider there is little chance of an additional crude oil or petroleum product tanker operating on the Australian coastal trade for the foreseeable future. A further reason to exempt petroleum shipping from the requirements of the bill is that domestic refineries are under significant competitive pressure and it is important not to impose additional and potentially costly requirements on the domestic shipment of crude oil and petroleum products. AIP consider that this accords with the policy principles of the bill because, as we understand it, there are no general licence holders available to carry cargoes or reliant on the voyage information provided by the temporary licence applicants. However, we acknowledge there may be potential operators who could be assessing voyages for business opportunities and as such, if exempted, we are willing to continue to provide voyage information to the department ex post for publication on the department's website.<sup>29</sup>

5.31 CMX Global Logistics is a logistics provider to the mining industry which ships RoRo (roll on/roll off) break bulk cargo. Many of its voyages do not include full shiploads. It also highlighted that there are currently no Australian flagged vessels that could carry its cargo. CMX provided an example of the benefits of a typical shipment it would undertake:

Over the past 12–18 months the mining and construction industries in Western Australia have experienced enormous backlogs at the QAP (Quarantine Approved Premise) facilities in Western Australia for the cleaning, inspection and release of their cargo by [the Australian Quarantine and Inspection Service] AQIS. As an alternative and to expedite the delivery of equipment to the end user we were offloading the equipment and machinery in Brisbane, cleaning and passing it through AQIS and then coastally shipping the cargo to Western Australia which reduced the waiting time for our clients by some 2-3 months. Thus enabling the cargo to be delivered to the end users, i.e. mining companies, contractors etc. and put the equipment to work.<sup>30</sup>

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28 Mr Frank Topham, Government Affairs and Media Manager, Caltex Australia Limited, *Committee Hansard*, 15 May 2012, p. 35.

29 *Committee Hansard*, 15 May 2012, p. 34.

30 CMX Global Logistics, *Submission 25*, pp 1–2.

5.32 CMX highlighted that '[t]here are no coastal AU flag vessels that could carry this cargo and even if there were they would not be financially viable because it's been tried before'.<sup>31</sup>

5.33 Sucrogen Bioethanol also informed the committee that there is currently no suitable Australian-flagged vessel for moving its product. It suggested that the proposed regime creates uncertainty regarding the availability of vessels to move its product, and that most of these uncertainties are founded in the minimum voyage requirement for TLs:

There is no Australian wet chemical tanker that can take our product. It is about having certainty that we will get a licence and then we will be able to negotiate with those foreign flagged vessels to make sure that we can ship that product when we need to. And if we need one or two voyages we cannot get a licence for one or two voyages; we must get a licence for five.

...In essence, we would have to use all five voyages or we would have to apply for a licence for five voyages fully knowing that we are not going to use them.<sup>32</sup>

5.34 Sucrogen Bioethanol told the committee that the removal of the minimum voyage requirement would 'appease' its concerns.<sup>33</sup>

#### ***Committee view***

5.35 The committee recognises that members of the shipping industry require vessels with a variety of specific capabilities to suit the many forms of cargo that move along the coast. It recognises that there may be cases where a suitable class of vessel is not available on the general register. Currently, for example, the Australian-flagged fleet does not offer a chemical tanker.

5.36 When there is no Australian registered vessel in a particular vessel class the committee emphasises that members of industry should still be required to provide voyage information to the department for publication. This will allow potential ship operators to assess business opportunities and is in keeping with the object of the CT bill to 'facilitate... the long term growth of the Australian shipping industry'.<sup>34</sup>

5.37 The committee considers the case for an exemption, where a certain class of vessel is not available, is primarily based on the difficulties imposed by the minimum voyage requirement for temporary licences. Some shippers that are currently facing

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31 CMX Global Logistics, *Submission 25*, p. 2.

32 Mr Garry Mulvay, Executive General Manager, Sucrogen BioEthanol Pty Ltd, *Committee Hansard*, 15 May 2012, p. 14.

33 Mr Garry Mulvay, Executive General Manager, Sucrogen BioEthanol Pty Ltd, *Committee Hansard*, 15 May 2012, p. 14.

34 Coastal Trading (Revitalising Australian Shipping) Bill 2012, paragraph 3(1)(b).

this situation in the proposed regime have indicated that an exemption from this requirement would appease their concerns.

5.38 The committee refers the department to its comments on the minimum voyage requirement in paragraphs 4.34–4.37 and again queries whether the minimum voyage requirement is superfluous to other transparency measures outlined in the CT bill.

### **Protecting integrated supply chains**

5.39 A number of submitters raised concern with the provision which allows GL holders to contest a voyage where cargo or shipping supply chains are integrated.<sup>35</sup> This was of particular concern to the petroleum industry. The AIP outlined:

We are also concerned about the potential segmentation of voyages, where parts of multiport, multiproduct voyagers could be won by another shipping operation. We consider that this could increase safety risks by increasing vessel movements, increase costs or make certain journeys uneconomic, and reduce the ability to respond to urgent supply situations.<sup>36</sup>

5.40 Caltex asserts that this could be overcome by defining voyages on an empty-to-empty basis, rather than on a port-to-port basis:

Defining voyages on a "port to port" basis provides GL holders with the ability to give notice in response to segments of an entire voyage. This means that when an oil company is moving multiple cargoes to multiple ports on one voyage, a GL may give notice that they are able to carry part of the cargo...

Caltex proposes that a voyage be defined by the entirety of a movement on an "empty to empty" basis rather than on a "port to port" basis. This could be provided for certain classes of cargo only, such as crude oil, petroleum feedstock and finished petroleum products, where the segmenting of cargo would lead to increased operational risk, as well as uneconomic and inefficient supply chains.<sup>37</sup>

### ***Committee view***

5.41 The committee considers that these concerns are adequately addressed in the CT bill, and balanced with the objective of the bill to 'maximise... the use of vessels registered in the Australian General Shipping Register in coastal trading'.<sup>38</sup> The committee highlights in particular the following elements that are considered when the

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35 BP Australia Pty Ltd, *Submission 11*, p. 2; Australian Institute of Petroleum, *Submission 12*, pp 3–4; Caltex Australia Limited, *Submission 16*, p. 15.

36 Mr Paul Barrett, Deputy Executive Director, Australian Institute of Petroleum, *Committee Hansard*, 15 May 2012, p. 34.

37 Caltex Australia Limited, *Submission 16*, pp 15–16.

38 Coastal Trading (Revitalising Australian Shipping) Bill 2012, paragraph 3(1)(d), p. 2.

Minister receives one or more notices to nominate for the trade of a temporary licence applications:

- paragraph 34(3)(c): 'whether those passengers or cargo can be carried in a timely manner'; and
- paragraph 34(3)(d): 'the reasonable requirements of a shipper'.

5.42 The committee encourages the department to consider these arguments and to provide guidance to industry members on the decision making criteria for potential voyage segmentation. This may be included in regulations to the bill, or in guidance material published on the department's website.

### ***Triangulation – ensuring the coastal leg for AISR vessels***

5.43 Sucrogen offered a similar argument on the need to protect its supply chain. Sucrogen, the former CSR Sugar Division, was recently acquired by Wilmar International — a large agribusiness in Asia. Wilmar also holds a majority interest in Raffles Shipping which operates 120 vessels.

5.44 Sucrogen has three main business interests in Australia:

- Sucrogen cane products (sugar milling, molasses and renewable energy production);
- Sucrogen Bioethanol (ethanol production); and
- a 75% stake in Sugar Australia (sugar refining).<sup>39</sup>

5.45 Sucrogen informed the committee that Raffles Shipping had determined it is unlikely it would build a new vessel using the incentives offered through the Australian International Shipping Register (AISR). Vessels on the AISR are required to use TLs when undertaking coastal trading in Australian waters, therefore a GL vessel could nominate for the trade of any AISR vessel on the coast.

5.46 Sucrogen outlined that triangulation of its Raffles' vessels cannot be assured on the Australian coast leg of its voyages. It argued that 'if you own a cargo and you own a ship, when it is on the coast you have no guarantee that you can carry your own cargo in your own ship':<sup>40</sup>

We see an opportunity—and we flagged this with the department—to put a vessel on the coast, on the second register, to carry that triangular task that we refer to. However, without the protection of carrying our own cargo and not allowing general licence holders to oppose that, it is difficult to make a

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39 Sucrogen Australia Pty Ltd, *Submission 14*, p. 1; Mr Martin Jones, General Manager, Government Relations, CSR Ltd, *Committee Hansard*, 15 May 2012, p. 13.

40 Mr Martin Jones, General Manager, Government Relations, CSR, *Committee Hansard*, 15 May 2012, p. 13.

\$20 million or \$30 million investment in a vessel on that second register if we are not afforded protection.<sup>41</sup>

### *Amendments in the House of Representatives*

5.47 As discussed above, 19 government amendments to the coastal trading bill were passed in the House of Representatives on 31 May 2012.<sup>42</sup>

5.48 The Hon. Anthony Albanese, MP, Minister for Infrastructure and Transport asserted that the issues raised by the sugar industry on triangulation of AISR vessels had been addressed in the amendments:

...we are also making an amendment to clause 34 that will enable consideration to be given as to whether the applicant owns the cargo and owns a vessel registered in the Australian international shipping register which will be used to carry the cargo. This will encourage investment in vessels on the Australian international shipping register and support increased participation by Australian flagged vessels in the triangular trades.<sup>43</sup>

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41 Mr Paul Gregory, General Manager, Finance and Supply Chain, Sugar Australia, *Committee Hansard*, 15 May 2012, p. 13.

42 *House of Representatives Hansard*, pp 35–36; Votes and Proceedings, House of Representatives, p. 1539; Supplementary Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012.

43 *House of Representatives Hansard*, p. 36.

