



## Shipping Business Unit Industry Bulletin

### Number 1 of 2015 – Federal Court Decision – Variations to Licences

The Federal Court of Australia recently handed down a decision in the case of CSL Australia Pty Ltd v Minister for Infrastructure and Transport [2014] FCA 1160 (the Decision). In this case the Federal Court considered, among other things, what types of variation to temporary licences are permissible under Subdivision C (Authorised Matters) and Subdivision D (New Matters) of Part 4 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act). Justice Rares found that the variations to the temporary licence requested in that case (where the origin and destination ports, loading dates, type and quantity of cargo to be carried on a voyage were all sought to be varied) could not have been granted under Subdivision C.

A copy of the Decision can be found on the Federal Court website at:

<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2014/2014fca1160>>. The decision appears to have significantly narrowed the kinds of variations that can be granted under Subdivision C. The Department suggests that temporary licence holders seek their own legal advice on the implications of this decision for their business and any future applications for variations to their temporary licences.

The Court found that applications made under Subdivision C of the Act (for variation of matters authorised by a temporary licence) must bear a reasonable relationship with the earlier authorised voyages (see [97] of the Decision). Generally, consistent with the decision, only a variation which 'can be seen in context, as procedural or routine or relatively minor so that it does not alter the substantive character of the earlier authorisation' can be sought under Subdivision C (at [95])—such as 'minor changes to expected loading or discharge dates, ports of loading or discharge, and the amount of cargo for one or more voyages authorised in the matters specified in the existing licence' (at [96]).

If a proposed variation does not have a reasonable relationship with the voyages earlier authorised by the temporary licence, licence holders will need to submit an application under Subdivision D of the Act (a new matters application) instead.

The Department will soon amend the application forms relating to temporary licences. All system users will be informed of these changes when complete.