



Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012

No. 56, 2012

An Act to deal with consequential and transitional matters arising from the enactment of the *Coastal Trading (Revitalising Australian Shipping) Act 2012*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 56, 2012

An Act to deal with consequential and transitional matters arising from the enactment of the *Coastal Trading (Revitalising Australian Shipping) Act 2012*, and for related purposes

[Assented to 21 June 2012]

The Parliament of Australia enacts:

Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012 No. 56, 2012 1

1 Short title

This Act may be cited as the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 June 2012
2. Schedules 1 and 2	Immediately after the commencement of section 2 of the <i>Coastal Trading (Revitalising Australian Shipping) Act 2012</i> .	1 July 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Consequential amendments

Australian Maritime Safety Authority Act 1990

1 At the end of subsection 11(2)

Add:

- ; (e) the administration or enforcement of a law of the Commonwealth that relates to coastal trading.

Navigation Act 1912

2 Section 7

Repeal the section.

3 Paragraph 10(b)

Repeal the paragraph, substitute:

- (b) a ship that is used to engage in coastal trading (within the meaning of the *Coastal Trading (Revitalising Australian Shipping) Act 2012*) under a general licence (within the meaning of that Act); or

4 Paragraph 10(c)

Omit “registered in Australia or engaged in the coasting trade”, substitute “to which paragraph (a) or (b) applies”.

5 Part VI

Repeal the Part.

6 Section 377JA

Repeal the section.

Occupational Health and Safety (Maritime Industry) Act 1993

7 Section 4

Insert:

Australian General Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

8 Section 4

Insert:

Australian International Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

9 Section 4

Insert:

coastal trading has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

10 Section 4

Insert:

emergency licence has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

11 Section 4

Insert:

general licence has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

12 Section 4

Insert:

temporary licence has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

13 After subsection 6(3)

Insert:

(3A) This Act also applies to:

- (a) a vessel that is used to engage in coastal trading under a general licence; and

- (b) a vessel that is used to engage in coastal trading under a temporary licence if the vessel is registered in the Australian International Shipping Register; and
- (c) a vessel that is used to engage in coastal trading under an emergency licence if the vessel is registered in the Australian General Shipping Register or the Australian International Shipping Register.

14 Subsection 6(4)

After “subsection (3)” (wherever occurring), insert “or (3A)”.

Seafarers Rehabilitation and Compensation Act 1992

15 Section 3

Insert:

Australian General Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

16 Section 3

Insert:

Australian International Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

17 Section 3

Insert:

coastal trading has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

18 Section 3

Insert:

emergency licence has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

19 Section 3

Insert:

general licence has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

19A At the end of subsection 19(1)

Add:

Note: This Act does not apply if a prescribed ship is a ship registered in the Australian International Shipping Register, see paragraph 61AA(b) of the *Shipping Registration Act 1981*.

20 After subsection 19(1)

Insert:

(1AA) This Act also applies to the employment of employees on:

- (a) a vessel that is used to engage in coastal trading under a general licence; or
- (b) a vessel that is used to engage in coastal trading under an emergency licence if the vessel is registered in the Australian General Shipping Register.

21 Subsection 19(1A)

Omit “In addition, this Act applies”, substitute “This Act also applies”.

Schedule 2—Transitional provisions

Part 1—Preliminary

1 Interpretation

- (1) In this Schedule:

Authority means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*.

coasting trade regulations means the *Navigation (Coasting Trade) Regulations 2007*, as in force immediately before commencement.

commencement means the day this item commences.

new law means the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

old law means Part VI of the *Navigation Act 1912*, as in force immediately before commencement.

permit holder has the same meaning as in the old law.

- (2) An expression used in this Schedule that is also used in the new law has the same meaning in this Schedule as it has in the new law.

Part 2—Continuation of existing permits, licences and declarations etc.

Division 1—Continuation of existing permits, licences and declarations

2 Permits to continue in force

- (1) If, immediately before commencement, a permit issued under section 286 of the old law in respect of an unlicensed ship was in force, the permit remains in force for the period:
- (a) beginning on commencement; and
 - (b) ending on:
 - (i) the day that is 4 months after the new law commences; or
 - (ii) the day the permit would have expired under the old law but for its repeal by Schedule 1 to this Act; or
 - (iii) if the Minister decides to cancel the permit—the day the permit is cancelled under the old law despite its repeal by Schedule 1 to this Act;whichever occurs first.
- (2) To avoid doubt:
- (a) section 7 of the *Navigation Act 1912* and the old law continue to apply in respect of a permit continued in force by subitem (1), despite their repeal by Schedule 1 to this Act; and
 - (b) section 10 of the *Navigation Act 1912* continues to apply in respect of a permit continued in force by subitem (1), despite its amendment by Schedule 1 to this Act.

3 Licences to continue in force

- (1) If, immediately before commencement, a licence granted under the coasting trade regulations was in force, the licence remains in force for the period:
- (a) beginning on commencement; and
 - (b) ending on:
-

- (i) the day that is 4 months after the new law commences;
or
 - (ii) if the Minister decides to cancel the licence—the day the licence is cancelled under the old law despite its repeal by Schedule 1 to this Act;whichever occurs first.
- (2) To avoid doubt:
 - (a) section 7 of the *Navigation Act 1912* and the old law continue to apply in respect of a licence continued in force by subitem (1), despite their repeal by Schedule 1 to this Act; and
 - (b) section 10 of the *Navigation Act 1912* continues to apply in respect of a licence continued in force by subitem (1), despite its amendment by Schedule 1 to this Act; and
 - (c) the coasting trade regulations continue to apply in respect of a licence continued in force by subitem (1), despite the repeal of the old law by Schedule 1 to this Act.
- (3) Despite subitem (2), sections 31, 32 and 77 of the new law apply in relation to a licence continued in force by subitem (1) as if it were a general licence.

4 Declarations to continue in force

- (1) If, immediately before commencement, a declaration made under subsection 8AA(2) of the *Navigation Act 1912* in respect of a trading ship was in force, then, to the extent that the declaration relates to the ship engaging in the coasting trade, it remains in force for the period:
 - (a) beginning on commencement; and
 - (b) ending on the day that is 4 months after the new law commences.
- (2) To avoid doubt:
 - (a) section 7 of the *Navigation Act 1912* and the old law continue to apply in respect of a declaration continued in force by subitem (1), despite their repeal by Schedule 1 to this Act; and
 - (b) section 8AA of the *Navigation Act 1912* continues to apply in respect of a declaration continued in force by subitem (1); and

- (c) section 10 of the *Navigation Act 1912* continues to apply in respect of a declaration continued in force by subitem (1), despite its amendment by Schedule 1 to this Act.

Division 2—Applications for permits, licences and declarations

5 Pending applications—permits

If:

- (a) a person has made one or more of the following applications:
 - (i) an application for a permit under section 286 of the old law;
 - (ii) after an application has been made for a permit under section 286 of the old law but before the grant of the permit—an application for an amendment to his or her application for the permit;
 - (iii) an application for an amendment of a permit granted under section 286 of the old law; and
- (b) the Minister has not decided the application before commencement;

then:

- (c) the Minister must decide the application in accordance with section 286 of the old law within 10 business days after commencement; and
- (d) if the Minister decides to grant the application—the Minister must:
 - (i) grant the person a permit under section 286 of the old law, despite its repeal by Schedule 1 to this Act, for a period of 3 months or less; and
 - (ii) cause the person to be given the permit; and
 - (iii) if the permit is to be subject to conditions—notify the person, in writing, of the conditions to which the permit is subject; and
- (e) if the Minister decides to reject the application—the Minister must notify the person, in writing, of the decision and the reasons for the decision.

6 Pending applications—licences

If:

- (a) a person has applied to the Minister for a licence, or renewal of a licence, under the coasting trade regulations; and
- (b) the Minister has not decided the application before commencement;

then:

- (c) the Minister must decide the application in accordance with the coasting trade regulations within 10 business days after commencement; and
- (d) if the Minister decides to grant the application—the Minister must:
 - (i) grant the person a licence, or a renewal of a licence, under the coasting trade regulations for a period of 3 months or less; and
 - (ii) cause the person to be given a licence; and
 - (iii) if the licence is to be subject to conditions—notify the person, in writing, of the conditions to which the licence is subject; and
- (e) if the Minister decides to reject the application—the Minister must notify the person, in writing, of the decision and the reasons for the decision.

7 Pending applications for declarations

If:

- (a) a person has applied to the Authority for a declaration under subsection 8AA(2) of the *Navigation Act 1912* in relation to a ship that is, or will be, engaging in the coasting trade; and
- (b) the Authority has not decided the application before commencement;

then, to the extent that the application relates to the coasting trade:

- (c) the Minister must decide the application in accordance with section 12 of the new law within 10 business days after commencement; and
- (d) if the Minister decides to grant the application—the Minister must make a declaration under section 12 of the new law; and
- (e) if the Minister decides to reject the application—the Minister must notify the person of the decision and the reasons for the decision.

Division 3—Cancellation of permits and licences

8 Pending cancellation of permit—show cause notice given

- (1) If:
- (a) before commencement, the Minister had given a permit holder a notice inviting the holder to show cause why the permit should not be cancelled; and
 - (b) at commencement:
 - (i) the permit holder had not shown cause why the permit should not be cancelled; and
 - (ii) the 7 day period for responding to the notice had not expired;

then, the permit holder may respond to the notice within the 7 day period in accordance with the old law, despite its repeal by Schedule 1 to this Act.

- (2) At the end of the 7 day period mentioned in subitem (1), the Minister must decide, in accordance with the old law, whether the continuing permit is to remain in force.

9 Pending cancellation of licence—show cause notice given

- (1) If:
- (a) before commencement, the Minister had given a licence holder a notice inviting the holder to show cause why the licence should not be cancelled; and
 - (b) at commencement:
 - (i) the licence holder had not shown cause why the licence should not be cancelled; and
 - (ii) the period for responding to the notice had not expired;

then, the licence holder may respond to the notice within the period stated in the notice in accordance with the old law, despite its repeal by Schedule 1 to this Act.

- (2) At the end of the period stated in the notice, the Minister must decide, in accordance with the old law, whether the licence is to remain in force.

Part 3—Transitional general licences

10 Applications for transitional general licences

- (1) A person may apply to the Minister for a transitional general licence authorising a vessel to be used to engage in coastal trading if:
 - (a) a licence granted under the coasting trade regulations in respect of the vessel is continued in force by item 3; and
 - (b) the vessel is registered under the law of a foreign country; and
 - (c) the person is the owner, charterer, master or agent of the vessel.

- (2) The application must be in writing and be accompanied by the following:
 - (a) evidence that the vessel is registered under the law of a foreign country;
 - (b) a statement that each seafarer working on the vessel, when the vessel is used to engage in coastal trading:
 - (i) is or will be an Australian citizen; or
 - (ii) is or will hold a permanent visa; or
 - (iii) is or will hold a temporary visa that does not prohibit the seafarer from performing the work he or she performs on the vessel;
 - (c) such information as is prescribed by the regulations;
 - (d) the application fee prescribed by the regulations.

- (3) The application must relate to one vessel only.

11 Process for deciding applications

Division 1 of Part 4 of the new law (other than section 13) applies in relation to an application under item 10:

- (a) as if a reference to a general licence were a reference to a transitional general licence; and
- (b) subject to the modifications set out in item 12.

12 Criteria for deciding applications

- (1) In deciding an application made under item 10, section 15 of the new law applies as if subsection 15(2) were not there.
- (2) Instead, in deciding such an application, the Minister may have regard to the following:
 - (a) whether the owner of the vessel intends to register it under the *Shipping Registration Act 1981* but is unable to do so immediately because of commercial obligations or requirements under a foreign law;
 - (b) whether the applicant held a licence or permit under the old law that was cancelled;
 - (c) any other matters the Minister thinks relevant.

13 Conditions imposed on all transitional general licences

- (1) Section 21 of the new law applies to a transitional general licence as if paragraph (a) were not there.
- (2) Instead, it is a condition that the vessel to which the transitional general licence relates must continue to be registered under the law of the relevant foreign country.

14 Renewal of transitional general licence

- (1) The Minister may renew a transitional general licence if the holder of the licence makes an application for renewal before the licence expires.
- (2) If an application for renewal of a transitional general licence is made, the licence is taken to continue to be in force until the application is decided.
- (3) A transitional general licence may only be renewed once.

15 Applications for renewal of transitional general licences

- (1) Despite section 13 of the new law, an application for the renewal of a transitional general licence authorising a vessel to be used to engage in coastal trading must be in writing and be accompanied by the following:
 - (a) evidence that the vessel is registered under the law of a foreign country;
 - (b) a statement that each seafarer working on the vessel, when the vessel is used to engage in coastal trading:
 - (i) is or will be an Australian citizen; or

- (ii) is or will hold a permanent visa; or
 - (iii) is or will hold a temporary visa that does not prohibit the seafarer from performing the work he or she performs on the vessel;
 - (c) a statement explaining what is preventing the vessel being registered under the *Shipping Registration Act 1981*, with reference to the following matters:
 - (i) financial, business or legal constraints;
 - (ii) what action is being, or will be, taken to register the vessel under the *Shipping Registration Act 1981*;
 - (d) such information as is prescribed by the regulations;
 - (e) the application fee prescribed by the regulations.
- (2) The application must relate to one vessel only.

16 Application of the new law and other laws of the Commonwealth

Subject to items 13, 14 and 15:

- (a) the new law (other than Division 3 of Part 4); and
- (b) any other law of the Commonwealth;

apply in relation to a transitional general licence as if it were a general licence.

Part 4—Review of decisions

17 Rights of review

Despite the repeal of section 377JA of the *Navigation Act 1912* by Schedule 1 to this Act, applications may be made to the Administrative Appeals Tribunal under that section for review of:

- (a) a decision by the Minister made before commencement to cancel a continuing permit granted under section 286 of the old law if, at commencement, the period for making an application for review has not ended; or
- (b) a decision made by the Minister, in accordance with the old law, to cancel a continuing permit granted under section 286 of the old law.

Part 5—Miscellaneous

18 Saving of orders

Despite the repeal of section 7 of the *Navigation Act 1912*, an order made under that section and in force immediately before commencement continues in force on and after commencement as if it were an exemption under subsection 11(1) of the new law.

19 Saving of permissions

Despite the repeal of the old law by Schedule 1 to this Act, a permission granted under subsection 286(6) of the old law and in force immediately before commencement, continues in force on and after commencement for the remainder of the period set out in the notice mentioned in subsection 286(6) of the old law as if:

- (a) the permission were a direction made under subsection 11(1) of the new law; and
- (b) any conditions to which the permission was subject were conditions specified in the direction.

20 Saving of exemptions

An exemption made under subsection 421(1) of the *Navigation Act 1912* relating to the coasting trade and in force immediately before commencement continues in force on and after commencement as if it were an exemption in force under subsection 11(1) of the new law.

21 Transitional regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including any saving or application provisions) relating to the amendments or repeals made by Schedule 1 to this Act.
- (3) Subitem (2) does not limit subitem (1).

*[Minister's second reading speech made in—
House of Representatives on 22 March 2012
Senate on 18 June 2012]*

(47/12)

*18 Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and
Transitional Provisions) Act 2012 No. 56, 2012*