

# **Shipping Registration Regulations (Amendment) 1991 No. 430**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1991 No. 430**

Issued by the Authority of the Minister for Shipping and Aviation Support

#### Shipping Registration Act 1981

#### Shipping Registration Regulations (Amendment)

Section 83 of the Shipping Registration Act 1981 (the Act) authorises the Governor-General to make regulations for the purposes of the Act. The Act creates the Australian Register of Ships, in which details of the ownership of Australian ships must be noted. In principle, the system of registration of ships is very similar to the Torrens system in operation in all States and Territories for registration of title to land.

The Shipping Registration Regulations (the Regulations) provide for such matters as the maintenance of the Register, the form of documents, the manner in which documents should be executed and lodged, fees for entries in the Register, the granting of certificates, and declarations of home ports.

Amendment of the Regulations became necessary to repeal some obsolete provisions, to make provision for changed administrative arrangements following the creation of the Australian Maritime Safety Authority, and to allow computerisation of the Register.

Details of the amendments are set out in the attachment.

The amendments came into effect on the day they were notified in the Gazette.

## ATTACHMENT

### Details of Amendments

#### Shipping Registration Regulations (Amendment)

Regulation 2 (Interpretation) amended previous regulation 2 to:

- remove from the definition of "moulded depth amidships" a reference to the Navigation (Load Lines) Regulations, which have been repealed, and inserted a new definition of "moulded depth"; and
- remove from the definition of "prescribed office" the references to Mercantile Marine Offices. There have been no such Offices since an amendment to section 13 of the Navigation Act 1912 in 1988.

The amendment to regulation 5 requires that caveats, as well as bills of sale and mortgage instruments, must be lodged at the Shipping Registration Office rather than at a branch office. A bill of sale, in relation to a ship, is the equivalent of a Memorandum of Transfer in respect of land. All documents required to be lodged with the Registrar take priority in order of their lodgment, but the three kinds of instruments mentioned are those in respect of which disputes over priority most commonly arise. The amendment ensures that the priority of these instruments can be more readily determined by removing the possibility that instruments could be lodged nearly simultaneously at several places.

The amendment to regulation 6 allows for service of notices or other documents by facsimile. This allows the Registrar of Ships greater flexibility in the service of documents, especially where the Registrar must serve such documents urgently.

The amendment to regulation 6A amends the definition of "least moulded depth" to take advantage of the amendment to the definition of "moulded depth" mentioned above, and to remove yet another reference to the Navigation (Load Lines) Regulations.

The amendment to regulation 10 ensures that a ship does not have to be measured for tonnage simply for registration purposes. Many ships are not required to be measured for tonnage for any other purpose. The list of exempt ships is therefore extended to include ships which have not had a certificate relating to the tonnage measurement of the ship issued under either the Navigation Act 1912 or another Act.

The omission of paragraph 11(1)(m) removes the requirement that the name and address of the registered agent of a ship be entered in the Register. Section 64 of the Act already requires the Registrar to enter in the Register the name and address of the registered agent of the ship. Paragraph 11(1)(m) was thus either superfluous or in conflict with the Act, and is therefore omitted.

Subregulation 11(3) is omitted because it is superfluous. Regulation 41 imposes the same obligation on the Registrar, to date and sign an entry in the Register. There is also an amendment to regulation 41 to permit the use of other methods of authentication - see below.

Paragraph 17(1)(q) is omitted. It was intended to allow for the grant of a temporary pass for a yacht to leave Australia at short notice to compete in an overseas race. Provisional registration is available under section 22A of the Act, and serves the same purpose, and the paragraph was therefore unnecessary.

The amendments to regulation 20 enable the Registrar to approve alternative places for the marking of ships with the name of their home port. Previously, regulation 20 required the ship's home port to be marked on the ship on either side of the bow and on the stern. The amendment

permits the Registrar to approve the marking in other places on the ship when it is impracticable to do so on the bow or stern.

The amendment to subregulation 20(5) is clarified to ensure that the Minister has clear power to place conditions on a determination that a ship need not comply with particular provisions of the Regulations in relation to markings. This power will continue to be held by the Minister rather than being transferred to the Australian Maritime Safety Authority.

The amendment to regulation 38 omits references to tonnage. These references were unnecessary since fees are no longer assessed on the basis of tonnage.

New subregulation 41(1) permits entries in the Register to be validated by means other than signatures, so as to permit the keeping of the Register on a computer database.

The amendment to Form 1 in Schedule 2 (Notice of Intention to Apply for Registration) requires a person who wishes to object to the registration of a ship to provide evidence of ownership with their notice of objection. This amendment is intended to reduce the likelihood of groundless objections to registration.

Other minor amendments replace references to the Department of Transport and Communications with references to the Australian Maritime Safety Authority.