

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 124

Issued under the authority of the Minister for Infrastructure and Transport

Shipping Registration Act 1981

Shipping Registration Amendment Regulations 2011 (No. 1)

Section 83 of the *Shipping Registration Act 1981* (the SR Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the SR Act, prescribing matters required or permitted by the SR Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the SR Act. In particular, paragraph 83(2)(t) of the SR Act makes provision for the imposition of fees.

Subsection 47(1) of the *Australian Maritime Safety Authority Act 1990* (AMSA Act) provides, in part, that the Australian Maritime Safety Authority (AMSA) may make determinations fixing charges and specifying the persons by whom, and the times when, the charges are payable.

From 4 July 2011, a new AMSA *Determination Fixing Charges* took effect and replaced most fees previously set out in the *Shipping Registration Regulations 1981* (the Principal Regulations).

The Regulations remove the relevant fees from the Principal Regulations as a consequence of the new determination.

The Regulations also make a minor amendment to replace one reference in the Principal Regulations.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

No formal consultation was undertaken specifically in relation to these amendments to the Principal Regulations. The amendments commenced on the same date as a new determination under subsection 47(1) of the AMSA Act (the fees determination). The fees that were removed from the Principal Regulations by these Regulations will be imposed by the fees determination (with some increases).

As well as setting out shipping registration fees, the new fees determination sets fees for a number of other services provided by AMSA to the Australian shipping industry. A Cost Recovery Impact Statement (CRIS) relating to the new fees determination was published on AMSA's website in April 2011. Consultations based on the CRIS were conducted from 13 April 2011 to 6 May 2011. Over 30 organisations (including shipowner representatives) were directly advised of this process. All were offered the opportunity of bilateral discussions if they had any concerns, but none sought such discussions. AMSA also made a presentation on 19 April 2011 about the proposed new charges to a meeting of the AMSA Advisory Committee which represents the full range of AMSA stakeholders. The Advisory Committee members did not raise any concerns about the proposed changes to shipping registration fees.

The Regulations commenced on 4 July 2011 to coincide with the date of effect of the new determination.

DETAILS OF THE SHIPPING REGISTRATION AMENDMENT REGULATIONS 2011
(No. 1)

Regulation 1 – Name of Regulations

Regulation 1 provides that the title of the Regulations is the *Shipping Registration Amendment Regulations 2011 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commenced on 4 July 2011. This date coincides with the date of effect of a new determination under subsection 47(1) of the AMSA Act.

Regulation 3 – Amendment of Shipping Registration Regulations 1981

Regulation 3 provides that Schedule 1 amends the *Shipping Registration Regulations 1981*.

Schedule 1 – Amendments

Item 1 – Regulation 5

Item 1 substitutes regulation 5 of the Principal Regulations with a new regulation 5.

Regulation 5 sets out when a document required by the Principal Regulations to be lodged with the Registrar of Ships (the Registrar) is taken to have been lodged. Regulation 5 previously required that a document be accompanied by "any fee payable on its lodgement". Fees that were payable on lodgement of documents were set out in Schedule 3 of the Principal Regulations.

Rather than provide for a fee for lodgement of a document, new regulation 5 requires payment of the charge for processing the document. That charge is set out in a determination made under subsection 47(1) of the AMSA Act.

A determination made under subsection 47(1) of the AMSA Act is a legislative instrument. Consequently, in accordance with paragraph 14(1)(a) of the *Legislative Instruments Act 2003*, another legislative instrument (such as the Principal Regulations) may refer to such a determination "as in force from time to time". While it is not explicitly stated in new section 5, it is implied that the charge referred to in that new section is a charge set out in a determination made under subsection 47(1) of the AMSA Act, as in force from time to time.

Item 2 – Subregulations 13(4) and (5)

Item 2 repeals the previous subregulations 13(4) and (5) of the Principal Regulations and replaces them with a new subregulation 13(4).

Regulation 13 prohibits a ship registered under the SR Act (a registered ship) departing from an Australian port to a port outside Australia or departing from a foreign port at which there is

a proper officer¹ unless the name and address of every person who is authorised to be the master of the ship is endorsed on the registration certificate of the ship. An endorsement may be made only if the registration certificate for the ship and a request signed by the master or the registered agent of the ship is lodged with the Registrar or a proper officer.

Subregulations 13(4) and (5) previously required that documents requesting the endorsement of the registration certificate with the names and addresses of persons authorised to be the master of a ship be accompanied by "the relevant fee". No fee had been prescribed for the purposes of subregulations 13(4) and (5).

New subregulation 13(4) combines the existing subregulations 13(4) and (5). Rather than provide for a fee for lodgement of the documents, the new subregulation 13(4) requires payment of the charge for processing the documents. That charge, if any, would be set out in a determination made under subsection 47(1) of the AMSA Act.

A determination made under subsection 47(1) of the AMSA Act is a legislative instrument. Consequently, in accordance with paragraph 14(1)(a) of the *Legislative Instruments Act 2003*, another legislative instrument (such as the Principal Regulations) may refer to such a determination "as in force from time to time". While it is not explicitly stated in the new subregulation 13(4), it is implied that the charge referred to in that new section is a charge set out in a determination made under subsection 47(1) of the AMSA Act, as in force from time to time.

Item 3 – Subregulation 17(5)

Section 23 of the SR Act provides for the issue of a temporary pass by the Registrar in special circumstances to allow an unregistered ship to travel between an Australian port and a foreign port or between two foreign ports.

Subregulation 17(5) of the Principal Regulations previously provided that, on receipt of an application for a temporary pass, the Registrar was required to pass it to the Minister for his consideration. As the Shipping Registration Office is part of AMSA, it is more appropriate that an application for a temporary pass be considered by AMSA rather than by the Minister.

Item 3 amends subregulation 17(5) to provide that an application for a temporary pass should be forwarded to the Authority² for consideration.

¹ "Proper officer" is defined in subsection 3(1) of the Act as follows:
proper officer means a person holding, or performing the duties of, any of the following offices (being an office of the Commonwealth) in a country or place outside Australia, namely:

- (a) Ambassador;
- (b) Minister;
- (c) Head of a Mission;
- (d) Chargé d' Affaires;
- (e) Counsellor, Secretary or Attaché of an Embassy, Legation or other post;
- (f) Consul General;
- (g) Consul; or
- (h) Vice Consul.

² In accordance with the definition in subsection 3(1) of the Act, **Authority** means "the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*".

Item 4 – After regulation 28A

Subsection 57(3) of the SR Act provides that a person may, on payment of the prescribed fee (if any), inspect the Australian Register of Ships (the Register) and, on payment of a prescribed fee, is entitled to be provided with a copy of, or an extract from, any entry on the Register. As subsection 57(3) specifically refers to prescribed fees, such fees should be prescribed in the Principal Regulations rather than being set out in a determination made under subsection 47(1) of the AMSA Act.

Item 4 prescribes a fee of \$28 to inspect the Register and a fee of \$50 for a copy of, or an extract from, an entry on the Register.

Item 5 – Regulation 38

Regulation 38 of the Principal Regulations previously prescribed the fees set out in Schedule 3 of the Principal Regulations and also provided for the payment of travelling and subsistence expenses where an officer³ incurs expenses following a request from the owner, master or registered owner of a ship.

Item 5 omits regulation 38 as a consequence of most shipping registration fees being set out in a determination made under subsection 47(1) of the AMSA Act.

Item 6 – Schedule 3

Item 6 omits Schedule 3 to the Principal Regulations which set out a number of fees payable in respect of the registration of ships.

³ In accordance with the definition in subsection 3(1) of the Act, *officer* means "a person (who may include the Minister) exercising powers, or performing duties or functions, under this Act"