

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 137

Issued under the authority of the Minister for Infrastructure and Transport

Subject- *Shipping Reform (Tax Incentives) Act 2012*

Shipping Reform (Tax Incentives) Regulation 2012

Subsection 28(1) of the *Shipping Reform (Tax Incentives) Act 2012* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part 1 of the Regulation provides the definitions of each category of seafarer training by reference to the duties performed by three categories of crew under the command of the master of the vessel. These definitions describe the nature of each occupation and are designed to enable a shipping company to understand the seafarer training requirement that it must satisfy in order to comply with the Regulation.

Part 2 prescribes the management and training requirements with which applicants for an income tax exemption must comply under sub section 5(1) and section 6 of the Act. The regulation provides that a shipping company must ensure that for each vessel it operates, there is at least one person undertaking training for each of the following categories of crew: engineer officer; deck officer; and integrated rating and steward. The Regulation explains the functions that comprise each of the management requirements and which need to be undertaken in Australia.

In accordance with section 17 of the *Legislative Instruments Act 2003*, industry stakeholders including shipowners and operators and industry representative organisations like the Australian Shipowners Association, Shipping Australia Limited, Maritime Union of Australia etcetera were consulted in the making of the Regulation.

Details of the Regulation are set out at the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 1 July 2012.

Authority: Subsection 28(1) of the *Shipping Reform (Tax Incentives) Act 2012*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Shipping Reform (Tax Incentives) Regulation 2012

A company wishing to access the Income tax Exemption (ITE) must meet the management requirements set out in this Regulation and have a training plan directed at increasing the employment and training of Australian seafarers. Details of the training plan are set out in the Regulation.

Human rights implications

The Regulation engages the following human rights:

Right to Privacy

Article 17 of the International Convention on Civil and Political Rights (ICCPR) specifies that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation, and that everyone has the right to the protection of the law against such interference or attacks.

In relation to a company's training plan the details include names, age and sex as well as the qualifications already held and those being sought. These details are set out in Part 2 of the Regulation.

Section 25 of the Act allows the Secretary of the Department to publish certain aggregate information about an entity, a consolidated group or a vessel and to disclose information to the Commissioner (of Taxation). However, the information that may be published or disclosed relates to the grant of a Certificate, or a Notice, but excludes personal information (within the meaning of *the Privacy Act 1988*). The information is therefore confined to company level information that relates to the concessions (generally at an aggregate level as a means of reporting on the benefits derived from these concessions). It will also allow the publication of aggregate information that will allow assessment of the effectiveness of the concessions and the training of seafarers, and where appropriate the disclosure of relevant information to the Australian Taxation Office.

Conclusion

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because the extent of any limitation of human rights is reasonable and proportionate to the information sought and benefits conveyed to applicants.

Details of the *Shipping Reform (Tax Incentives) Regulation 2012*

Part 1 – Preliminary

Section 1 - Name of Regulation

This title of the Regulation is the *Shipping Reform (Tax Incentives) Regulation 2012*.

Section 2 - Commencement

The Regulation commences on 1 July 2012.

Section 3 - Definitions

Clause 3 provides the definitions in this Regulation. These define what is meant by the various categories of seafarer training necessary for an entity to satisfy the training requirement in clause 4 of this regulation.

Part 2 – Training and Management requirements

Section 4 - Training requirements

This clause provides the definition of the training requirements established by subsection 5(1) of the *Shipping Reform (Tax Incentives) Act 2012*. A shipping company must ensure that for each vessel it operates, there is at least one person undertaking training for each of the following categories:

- (a) engineer officer training;
- (b) deck officer training; and
- (c) integrated rating and steward training.

Some flexibility is provided to operators of multiple vessels in that the trainees can be spread across a number of vessels. The draft regulation provides an example to illustrate this. Subclause 4(4) sets out the details the shipping company needs to provide for each trainee in order to satisfy the training requirement.

The training that needs to be provided relates to qualifications that have been approved under the *Navigation Act 1912*. This Act confers power on the Australian Maritime Safety Authority (AMSA), as the authority responsible for Australia's implementation of the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978*, to approve seafarer qualifications and the method of their attainment.

Section 5 - Management requirements

This clause provides details of the management requirements established by section 6 of the *Shipping Reform (Tax Incentives) Act 2012*. For a shipping company to gain access to the Income Tax Exemption provided for under the *Tax Laws Amendment (Shipping Reform) Act*

2012 it must satisfy these management requirements. These requirements involve having crew management and either commercial, technical or strategic operations undertaken in Australia.

Descriptions of the functions that comprise each of the management requirements and which need to be undertaken in Australia, as a means of growing the cluster of maritime activities performed in this country, are provided by this Regulation.