

EXPLANATORY STATEMENT

Mutual Recognition Act 1992

Automatic Mutual Recognition (South Australia) (Exemption – Marine Pilots) Declaration 2022

This explanatory statement provides notes on the operation of the *Automatic Mutual Recognition (South Australia) (Exemption – Marine Pilots) Declaration 2022* (the Declaration). The specific provisions in the Declaration are outlined in Attachment A. The information in the explanatory statement is an aid to understanding the Declaration and should not be substituted for the Declaration.

Context and purpose

Part 3A of the *Mutual Recognition Act 1992* of the Commonwealth (MRA) provides for the automatic mutual recognition of occupational registrations (AMR). AMR will provide an entitlement for an individual to carry on an activity in a second State, under the registration covering the activity in their home State through Automatic Deemed Registration (ADR).

Part 3A of the MRA provides for the making of declarations that exclude certain registrations from ADR where a Minister of a State is satisfied that the declaration is necessary because of a significant risk arising from circumstances or conditions in the declaration state, to consumer protection, the environment, animal welfare or the health or safety of workers or the public. The *Legislation Act 2003* of the Commonwealth provides for the making of legislative instruments.

Summary

Through this Declaration, the Treasurer of South Australia has excluded a registration from ADR for the period 1 July 2022 to 1 July 2027. By virtue of the making of the Declaration, the Treasurer is satisfied that the exclusion is necessary because of a significant risk to the environment, animal welfare and the safety of workers and the public. The Declaration provides an explanation of the specific risks arising from the registration in the context of the circumstances and conditions in South Australia. The information relied on to support the decision is provided in Attachment B.

Consultation

South Australia did not conduct public consultation as the Treasurer of South Australia and state considers it inappropriate in the circumstances. In preparing the declaration, the Treasurer of South Australia had regard to the expert information available and the positions of persons likely affected. The Treasurer of South Australia acted on the advice of the Department for Infrastructure and Transport and in recognition of the risk assessment undertaken and summarised in Attachment B.

Attachment A

Automatic Mutual Recognition (South Australia) (Exemption – Marine Pilots) Declaration 2022

Part 1 – Preliminary

Section 1 – Name

This section provides that this Declaration is to be cited as the *Automatic Mutual Recognition (South Australia) (Exemption – Marine Pilots) Declaration 2022* (the Declaration).

Section 2 – Commencement

This section provides the date on which the Declaration comes into operation. The Declaration comes into operation on 1 July 2022.

Section 3 – Authority

This section outlines the authority through which the Declaration is made. The Declaration is made under section 42S of the *Mutual Recognition Act 1992* (Commonwealth).

Section 4 – Simplified outline of the instrument

This section explains that the purpose of this instrument is to exempt a specified registration from the Automatic Deemed Registration (ADR) provisions of the *Mutual Recognition Act 1992* (MRA), the application of the exclusion and the period of the exclusion.

Section 5 – Definitions

This section provides, for the purposes of this Declaration, self-explanatory definitions of the following terms:

- The Act is defined in this section as meaning the *Mutual Recognition Act 1992*.

Section 6 – Exemptions

The Declaration is made in accordance with paragraph 42S(1)(a) of the MRA to provide that Pilotage licences issued under the *Harbors and Navigation Act 1993 (South Australia)* (shown in column 1) is excluded from ADR because the Minister making the Declaration is satisfied that there is a significant risk to the environment, animal welfare, or the health or safety of workers (as outlined in column 2).

This means that an individual cannot carry on the activities authorised under this registration in South Australia without a Pilotage licence issued under the *Harbors and Navigation Act 1993 (South Australia)*. An individual may obtain a Pilotage licence under Part 3 of the MRA.

In accordance with subsection 42S(2) of the MRA, this provision in the Declaration also provides a statement of the risk to the environment, animal welfare or the health or safety of workers (as shown in column 2).

The following table replicates the provisions in the Declaration.

Exemptions for the purposes of paragraph 42S(1)(a)

Item	Column 1 Registration	Column 2 Statement of risk
1	<i>Marine Pilots</i> (under the <i>Harbors and Navigation Act 1993 (South Australia)</i>)	<u>Risk to the environment, animal welfare, and or the health or safety of workers</u> The role of a marine pilot requires intimate knowledge of the respective harbor or port they are operating in. Allowing a marine pilot to operate at a specific harbor or port in South Australia who has not been issued a Pilotage licence in South Australia and completed the necessary assessment requirements presents a risk that they will not be able to safely navigate a large shipping vessel which could lead to a shipping incident that impacts on the marine environment, marine animals, or other vessels and the workers on them.

Subsection 4 provides a self-repeal date for section 6.

The Hon Stephen Mullighan MP

Treasurer (South Australia)

Attachment B - Information relied on to support the minister

Background information on Pilotage licences in South Australia for Marine Pilots

A Marine Pilot is responsible for navigating and manoeuvring large vessels through dangerous or congested waters, such as harbors or river mouths. The pilot completes this task by boarding the ship via a small pilot boat and ensuring the ship is safely navigated when entering or leaving the harbor or river mouth. This process is known as a pilot transfer arrangement.

A Marine Pilot must possess expert knowledge of the particular waterway they are stationed at and any risks that need to be accounted for when navigating a ship (such as an underwater reef or shallow waters). As such, this profession is highly specialised with the pilot having to undertake extensive training and assessment on a particular harbor before being authorised to pilot there.

In South Australia, any vessel 35 metres in length or more must be navigated by a Marine Pilot within a prescribed area, unless the master of the vessel holds an exemption certificate from requiring pilotage.

Prescribed areas in South Australia that require compulsory pilotage include the following ports/harbors:

- Port Adelaide.
- Port Augusta.
- Port Bonython.
- Port Giles.
- Port Lincoln.
- Port Pirie.
- Thevenard.
- Wallaroo.
- Whyalla.

Licensing and eligibility requirements

The Department for Infrastructure and Transport (the Department) is responsible for issuing Pilotage licences in accordance with section 33 of the *Harbors and Navigation Act 1993 (South Australia)*. Pilotage licences are issued to private individuals working in the marine industry.

To be eligible for a Pilotage licence a person must meet the following criteria:

- The person holds a relevant qualification to operate the size of the vessel they are applying as a Marine Pilot for.
- The person has the necessary experience or knowledge in relation to the operation of the vessels in the harbor, after consulting with the relevant port or harbor operator.
- The person's eyesight complies with the required standards and must not suffer from any progressive eye disorder.
- The person does not suffer from a mental or physical impairment that may affect their ability to perform the role of a pilot.

Assessment and training requirements

For the purpose of determining whether a person has the required knowledge or experience to operate the vessels they are applying to pilot, a person must pass an examination set by the Department which is conducted by the port operator at the harbor the person is applying to be licensed as a pilot.

The following is completed by the applicant as part of that examination:

- An oral examination performed by a currently licensed Marine Pilot.
- A blank marine chart comprising of the navigational and pilotage features relevant to the specific port/harbor being applied for.
- Understanding the local port/harbor rules.
- Vessel arrival communication procedures.
- Tug boat orders vocabulary for South Australia.
- Notes.
- Chartlets.
- Pilot passage plans.
- Pilotage logs showing experience being mentored and observed to the satisfaction of an already licensed Marine Pilot for the particular port/harbor.

Once the above requirements have been satisfied the Department may grant the applicant a licence to operate as a Marine Pilot at the specific port/harbor in South Australia.

A Marine Pilot can be licensed to operate at more than one harbor and no limit is set. However, they must make application and undergo the same examination process (as mentioned above) for each harbor they wish to operate in, as there will be different features or risks associated with each harbor that the person must have the required expertise and knowledge in before being authorised to pilot there.

Identified risks of Automatic Deemed Registration for Pilotage licences in South Australia

Risk to the environment, animal welfare and/or the health or safety of workers – requirement for local knowledge and experience of harbor or port

Harbors and ports are particularly high risk settings for large vessels that are required to enter or leave them. This is due to a range of factors including the movement of other vessels, the local marine environment (such as a shallow reef), the water conditions (such as tide movements) and local marine life.

Based on this it is critical that large vessels are piloted by a person who possesses local knowledge and expertise to ensure the safe passage of the vessel without any risk of an incident.

The licencing of Marine Pilots is predicated heavily on the pilot possessing intimate knowledge of the harbor or port they are applying to operate in. This is evident in the chart assessment (described above) which requires the person to have a clear knowledge of any high risk environmental factors (such as a local reef or rocks), important safety elements and how to effectively use them (navigational aids) and local procedures for safe and effective

movement of vessels. Based on this Marine Pilots are experts within their local harbor or ports, not all harbors or ports.

Permitting Marine Pilots to operate in harbors or ports in South Australia who have not been issued a Pilotage licence in South Australia (and complied with South Australia's requirements) could lead to inexperienced pilots navigating vessels, which in turn could lead to shipping incidents if a vessel is not correctly or efficiently navigated through a harbor or port.

Due to the size of the vessels that require Pilotage, any incident through incorrect or inefficient navigation could cause damage to the local marine environment, including any marine life, particularly if the incident results in the vessel polluting the water.

Any shipping incident through incorrect or inefficient navigation of a vessel would also likely create unsafe working conditions for the staff on-board the vessel or any other vessel involved, thereby placing their health or safety at risk.