

EXPLANATORY STATEMENT

Issued by authority of the Minister for Infrastructure, Transport, Regional Development and Local Government

Shipping Reform (Tax incentives) Act 2012

Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023

Legislative Authority

Subsection 10(5) of the *Shipping Reform (Tax Incentives) Act 2012* (the Act) provides that the Minister may, by legislative instrument, specify:

- a) kinds of vessels that are to be excluded vessels; and
- b) kinds of vessels that are not to be excluded vessels.

The *Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023* (the instrument) is made under section 10(5)(b) of the Act and is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

Purpose

The instrument specifies LNG tankers and gas carriers operating on international routes and ro ro ferries operating on interstate routes as kinds of vessels that are not to be excluded vessels under subsection 10(4) of the Act.

Background

The Act provides a first step for the Australian shipping industry to access tax incentives in the *Income Tax Assessment Act 1997*. The aim of the Act is to encourage:

- investment in the Australian shipping industry; and
- the development of sustainable employment and skills opportunities for Australian seafarers.

The Act commenced operation on 1 July 2012.

Under Parts 2 and 3 of the Act, Australian operators of Australian registered vessels can apply for a notice or certificate. Access to a notice or certificate requires applicant entities to meet the requirements for vessels under section 10 of the Act. Vessels must meet the tonnage requirements and be a registered vessel within the meaning of the *Shipping Registration Act 1981*.

Additionally, vessels will not be eligible if they fall within the list of excluded vessels in subsection 10(4) of the Act.

Impact and effect

The instrument commences on 1 October 2023 to allow entities to benefit from the tax incentives for the relevant financial year in relation to an Australian registered vessel.

The instrument repeals and replaces the previous instrument, the *Shipping Reform (Tax Incentives) Act 2012 Subsection 10 (5) specification of kinds of vessels* which sunset on

1 October 2023. The instrument was made with minor amendments to continue the specification of LNG tankers and gas carriers operating solely on international routes and ro ro ferries operating solely on interstate routes as kinds of vessels not to be excluded for the purposes of the Act.

The Act does not specify conditions that need to be satisfied before the power to make the instrument may be exercised.

Notes on sections

Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023

Section 1 – Name

This section provides that the name of the instrument is the *Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023*.

Section 2 – Commencement

This section provides for the *Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023* to commence on 1 October 2023.

Section 3 – Authority

This section provides that the *Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023* is made under section 10(5)(b) of the *Shipping Reform (Tax Incentives) Act 2012*.

Section 4 – Definitions

This section provides the definitions of terms used in the *Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023*.

Section 5 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Section 6 – Kinds of Vessels that are not to be excluded vessels

This section specifies LNG tankers and gas carriers operating solely on international routes and ro ro ferries operating solely on interstate routes as kinds of vessels which are not to be excluded vessels for the purposes of the *Shipping Reform (Tax Incentives) Act 2012*.

Schedule 1 – Repeals

Schedule 1 specifies that the *Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023* repeals the *Shipping Reform (Tax Incentives) Act 2012 Subsection 10 (5) specification of kinds of vessels*.

Consultation

Appropriate consultation has been undertaken in accordance with section 17 of the *Legislation Act 2003*.

From September 2021 to July 2023, the Department engaged in four rounds of consultation with various industry stakeholders including entities which normally apply for tax incentives notices or certificate under the Act, the Maritime Union of Australia and Maritime Industry

Australia Ltd. Stakeholders were generally supportive of the remaking of the instrument with minor amendments before the 1 October 2023 deadline so its legal affect may continue.

The Australian Maritime Safety Authority, Treasury, the Australian Taxation Office and the Office of Impact Analysis were consulted on the development of the instrument.

Regulation Impact Statement

The Office of Impact Analysis (OIA) advised that in lieu of an Impact Analysis the Department may self-assess and certify the performance of the instrument. The performance of this instrument has been self-assessed, informed by consultation with stakeholders, and the instrument is determined to be operating effectively and efficiently. A certification letter for self-assessment was provided to the OIA in July 2023. The OIA reference is OBPR21-01064.

Statement of Compatibility with Human Rights

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

Shipping Reform (Tax Incentives) (Specification of Kinds of Vessels) Instrument 2023

This Disallowable Legislative Instrument 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*.

Overview of the Disallowable Legislative Instrument

The *Shipping Reform (Tax Incentives) Act 2012* (the Act) effects elements of the Government's Stronger Shipping for a Stronger Economy reform by establishing eligibility criteria for access to taxation incentives designed to revitalise Australia's shipping industry. The Disallowable Legislative Instrument refines the list of excluded vessels under subsection 10(4) of the Act by specifying kinds of vessels that are not to be excluded vessels under the Act.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms as the Instrument is of a minor or machinery nature.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.