

EXPLANATORY STATEMENT

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

Shipping Reform (Tax Incentives) Act 2012

Shipping Reform (Tax Incentives) Regulations 2023

Legislative Authority

Subsection 28(1) of the *Shipping Reform (Tax Incentives) Act 2012* (the Act) provides that the Governor-General may make regulations prescribing matters:

- a) required or permitted by the Act to be prescribed; or
- b) necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Shipping Reform (Tax Incentives) Regulations 2023* (the Regulations) is a legislative instrument for the purposes of the *Legislation Act 2003*.

Purpose

The Regulations provide for the training and management requirements which are required to be met for a shipping exempt income notice or certificate to be issued under the Act to an Australian registered vessel.

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.

There are a range of tax incentives that may be available in respect of operations associated with the Australian shipping industry, one of which is the exempt income tax incentive. Access to the exempt income tax incentive requires applicant entities to be issued a shipping exempt income notice or certificate under the Act.

Australian operators of Australian registered vessels can apply for a notice or certificate under Parts 2 and 3 of the Act. A shipping exempt income notice or certificate will need to set out that the entity's training plan and management arrangements meet the training and management requirements which are set out in the Regulations.

Impact and effect

The Regulations set out the training and management requirements which are required to be met for a shipping exempt income notice or certificate to be issued under the Act to an Australian registered vessel. An entity with a shipping exempt income certificate may gain access to the income tax exemption provided for under sections 51-100 of the *Income Tax Assessment Act 1997*.

The Regulations repeal and replace the previous legislation, the *Shipping Reform (Tax Incentives) Regulation 2012*, which sunset on 1 October 2023. The Regulations have been made with minor amendments to ensure the continuation of measures in place for training and management requirements for the issuance of a shipping exempt income notice or certificate under the Act.

Notes on sections

Shipping Reform (Tax Incentives) Regulations 2023

Part 1 of the *Shipping Reform (Tax Incentives) Regulations 2023* 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 the entity to understand the seafarer training requirement that it must satisfy in order to comply with the *Shipping Reform (Tax Incentives) Regulations 2023*.

Section 1 - Name

This section provides that the title of the Regulations is the *Shipping Reform (Tax Incentives) Regulations 2023*.

Section 2 - Commencement

This section provides for the commencement of the *Shipping Reform (Tax Incentives) Regulations 2023*. It provides that the whole of the Regulations commence the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the *Shipping Reform (Tax Incentives) Regulations 2023* are made under the *Shipping Reform (Tax Incentives) Act 2012*.

Section 4 – 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 5 - Definitions

This section provides the definitions in the *Shipping Reform (Tax Incentives) Regulations 2023*. These define what is meant by the various categories of seafarer training necessary for an entity to satisfy the training requirement in section 6 of the *Shipping Reform (Tax Incentives) Regulations 2023*.

Part 2 prescribes the management and training requirements with which applicants for a shipping exempt income notice or certificate must comply under subsection 5(1) and section 6 of the *Shipping Reform (Tax Incentives) Act 2012*. The *Shipping Reform (Tax Incentives) Regulations 2023* provide that the entity must ensure that, for each vessel operated by the entity, training is being undertaken by at least one person (the *trainee*) in each of the following categories of crew: engineer officer; deck officer; and integrated rating and steward. The *Shipping Reform (Tax Incentives) Regulations 2023* explain the functions that comprise each of the management requirements and which need to be undertaken in Australia.

Section 6 - Training requirements

This section sets out the training requirements under subsection 5(1) of the *Shipping Reform (Tax Incentives) Act 2012*. An entity must ensure that, for each vessel operated by the entity, training is being undertaken by at least one person (the trainee) in relation to the vessel in each of the following categories:

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

This requirement must be met for each vessel of the entity to which the training requirements apply.

Some flexibility is provided to operators of multiple vessels in that trainees can be spread across a number of vessels. For example, if an entity operates 2 vessels to which the training requirements apply, the entity must ensure that training is being undertaken by at least 6 trainees (2 trainees in each of the categories mentioned in subsection (2)), but there may be 4 trainees on one vessel and 2 trainees on another vessel.

The entity must ensure that each trainee in a training category is seeking to obtain a prescribed qualification. A prescribed qualification means a qualification, competency, proficiency or standard prescribed by an instrument made for the purposes of subsection 29(2) of the *Navigation Act 2012*. The *Navigation Act 2012* 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.

Subsection 6(5) sets out the details the entity needs to provide for each trainee in order to satisfy the training requirement.

Section 7 - Management requirements

This section provides details of the management requirements established by section 6 of the *Shipping Reform (Tax Incentives) Act 2012*. For an entity to gain access to the income tax exemption provided for under sections 51-100 of the *Income Tax Assessment Act 1997*, it must satisfy these management requirements. These requirements involve having crew management and either commercial, technical or strategic operations undertaken in Australia.

Part 3 provides for the application, saving and transitional provisions. This part is not contrary to section 7(2) of the *Acts Interpretation Act 1901*, but rather works alongside it to transition things from being done under the previous legislation, the *Shipping Reform (Tax Incentives) Regulation 2012*, to being done under the *Shipping Reform (Tax Incentives) Regulations 2023*.

Section 8 - Things done under the Shipping Reform (Tax Incentives) Regulation 2012

This section provides for the application, saving and transitional provisions for the *Shipping Reform (Tax Incentives) Regulations 2023*.

Schedule 1 – Repeals

Schedule 1 specifies that the *Shipping Reform (Tax Incentives) Regulations 2023* repeal the *Shipping Reform (Tax Incentives) Regulation 2012*.

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 certificates under the Act, the Maritime Union of Australia and Maritime Industry Australia Ltd. Stakeholders were generally supportive of the remaking of the Regulations with minor amendments before the 1 October 2023 deadline so their 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 Regulations.

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 Regulations. The performance of the Regulations has been self-assessed, informed by consultation with stakeholders, and the Regulations are 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) Regulations 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

There are a range of tax incentives that may be available in respect of operations associated with the Australian shipping industry, one of which is shipping exempt income. Access to the shipping exempt income tax incentive requires applicant entities to satisfy training and management requirements set out in this Disallowable Legislative Instrument.

Human rights implications

The Regulations 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 an entity's training plan the details include names, age and gender as well as the qualifications already held and those being sought. These details are set out in Part 2 of the Regulations.

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 granting of a notice, or a certificate, but excludes personal information (within the meaning of *the Privacy Act 1988*). The information is therefore confined to entity level information that relates to the tax incentives (generally at an aggregate level as a means of reporting on the benefits derived from these tax incentives). The publication of aggregate information will allow assessment of the effectiveness of the tax incentives and, where appropriate the disclosure of relevant information to the Australian Taxation Office.

Conclusion

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 because the extent of any limitation of human rights is reasonable and proportionate to the information sought and benefits conveyed to applicants.

