

2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SHIPPING REGISTRATION AMENDMENT (AUSTRALIAN
INTERNATIONAL SHIPPING REGISTER) BILL 2012**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Infrastructure and Transport,
the Honourable Anthony Albanese, MP)

SHIPPING REGISTRATION AMENDMENT (AUSTRALIAN INTERNATIONAL SHIPPING REGISTER) BILL 2012

POLICY CONTEXT

The *Shipping Registration Amendment (Australian International Shipping Register) Bill 2012* is part of the Government’s *Stronger Shipping for a Stronger Economy* legislative package. The full policy context and background to the package is set out in the explanatory memorandum for the *Coastal Trading (Revitalising Australian Shipping) Bill 2012*.

***Stronger Shipping for a Stronger Economy* Legislative Package**

The shipping reforms are an integrated policy framework consisting of three legislative packages:

Coastal Trading	<ul style="list-style-type: none">• Coastal Trading (Revitalising Australian Shipping) Bill 2012• Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012
Australian International Shipping Register	<ul style="list-style-type: none">• Shipping Registration Amendment (Australian International Shipping Register) Bill 2012
Taxation Incentives	<ul style="list-style-type: none">• Shipping Reform (Tax Incentives) Bill 2012• Tax Laws Amendment (Shipping Reforms) Bill 2012

OUTLINE

The *Shipping Registration Amendment (Australian International Shipping Register) Bill 2012* (the Bill) provides for the establishment of a new Australian International Shipping Register (the International Register), its operation, administration and seafarer employment conditions.

International registers have been established by a number of traditional maritime countries to offer their ship owners an alternative to registering under open registers. International registers offer some of the advantages of open registers, such as the ability to use crew of different nationalities, while maintaining the link between ownership/management of the vessels and the national flag. Maintaining this link ensures that the maritime safety regulator and other regulators of the ‘flag state’ continue to have control of safety and environmental standards, enforcement and compliance, and other matters which underpin the reputation of the national ‘flag’.

Australia’s rapidly expanding commodity trade is driving an increase in the shipping task. Establishing an Australian International Shipping Register provides an opportunity for domestic ship operators to increase their involvement in international trade, without the need to re-register offshore.

In establishing an Australian International Shipping Register, the Government is seeking to ensure that it maintains its international reputation for high quality maritime safety standards while ensuring the register is a competitive alternative. Accordingly, the same standards of safety, environmental and occupational health and safety standards will apply to vessels registered on both the International and the Australian General Shipping Register.

The Australian Maritime Safety Authority (AMSA) will regulate these vessels, including the labour law provisions. The International Register will apply substantial Australian ownership requirements for those registering vessels. This is critical to ensure that there is a clear nexus between ship ownership and Australia, thus providing AMSA with the ‘regulatory reach’ to monitor and enforce standards. AMSA will have the discretion whether to register a vessel on the International Register.

Consistent with the operation of other quality international registers, vessels on the International Register will be permitted to operate with mixed crews. This reflects the global nature of shipping, with crew drawn from across the world. The Government has determined that at least two senior positions (engineering and deck officers) are to be filled by Australians. This reflects the policy intent to build the domestic maritime skills base, by providing an opportunity for Australians to gain the necessary international seafaring experience.

To ensure that the International Register is competitive, international labour terms and conditions will apply to seafarers working on board ships registered in the International Register while they are engaged in international trading. A minimum safety net is provided through the application of the International Labour Organization’s (ILO) Maritime Labour Convention (MLC), which Australia has ratified. The *Navigation Act 1912* and the *Navigation Amendment Act 2011* are the primary vehicles giving effect to the MLC. These provisions will apply to ships registered in the International Register and, as such, are not replicated in *Shipping Registration Amendment (Australian International Shipping Register) Bill*.

The International Register established by the Bill provides an alternative registration option for ships that are predominantly engaged in international trading. The previous Australian Register of Ships will effectively become the Australian General Shipping Register (the General Register). Consistent with this policy intent the primary objectives of this reform are to:

- facilitate Australian participation in international trade;
- provide an internationally competitive register to facilitate the long term growth of the Australian shipping industry; and
- promote the enhancement and viability of the Australian maritime skills base and the Australian shipping industry.

The key contents of the Bill are as follows:

- It establishes two registers – the General and International Registers – including transitional provisions relating to the Australian Register of Ships, and outlines specific conditions of registration in the International Register.
- It deals with the application process for registration, including the ability to refuse or cancel registration in the International Register, the criteria for making such decisions and internal review process for review of these decisions.
- It provides for employment conditions in accordance with the MLC and other relevant ILO treaties to which Australia is a signatory, including work agreements, and determination of minimum wages and paid annual leave for seafarers working on board ships registered in the International Register that are engaged in international trading.
- It provides for collective agreements to be negotiated by a seafarers' bargaining unit, dispute resolution procedures, protection against victimisation and compulsory insurance for death or long-term disability.
- It also provides additional enforcement powers for the AMSA for the purpose of ascertaining whether it complies with the working, living and crewing condition provisions of the Act, and establishes a civil penalty and infringement notice regime.

Financial Impact Statement

There will be no impact on Commonwealth expenditure.

REGULATORY IMPACT STATEMENT

A Regulatory Impact Statement was prepared on the shipping reform package. This can be accessed at

http://www.infrastructure.gov.au/maritime/shipping_reform/files/RIS_post_OBPR_20110816_formatted.pdf

Statement of Compatibility with Human Rights

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

Shipping Registration Amendment (Australian International Shipping Register) Bill 2012

This Bill 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 Bill/Legislative Instrument

The *Shipping Registration Amendment (Australian International Shipping Register) Bill 2012* (the Bill) establishes an International Register as an alternative registration option to the existing Australian Register of Ships (which will be renamed the General Register). It is expected that ships registered on the International Register will be primarily engaged in international trading. Ships registered on the International Register will be subject to the same maritime safety, environmental and occupational health and safety requirements as ships registered in the General Register. However, the *Fair Work Act 2009* and the *Seafarers Rehabilitation and Compensation Act 1992* will not apply to ships on the International Register when those ships are undertaking international voyages.

When ships on the International Register are undertaking international voyages, the employment conditions of seafarers working on those ships will be governed by provisions of Part II of the *Navigation Act 1912* (as amended by the *Navigation Amendment Act 2011* in accordance with this Bill), as well as by provisions of the Bill. These provisions will, in combination, protect seafarers' employment conditions in accordance with the International Labour Organization's Maritime Labour Convention, 2006. The Maritime Labour Convention is designed to protect the world's 1.2 million or more seafarers, and addresses the evolving realities and needs of an industry that handles 90 per cent of international trade. It sets out a seafarers' 'bill of rights' and is intended to be the 'fourth pillar' in the international shipping regulation, complementing major maritime Conventions of the International Maritime Organization on environmental protection and ship safety and security. The Australian Government ratified the Maritime Labour Convention in 2011.

Human rights implications

The Bill engages the following human rights:

Just and favourable conditions in work

Article 7 of the International Covenant on Economic, Social and Cultural Rights protects the right of workers to the enjoyment of just and favourable conditions of work. This includes fair wages, equal remuneration for work of equal value, safe and healthy working conditions, equal opportunity in promotion, and rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

The Bill, along with Part II of the *Navigation Act 1912*, protects the right of workers to just and favourable conditions of work. In accordance with the Maritime Labour Convention, the Bill and the *Navigation Act 1912* protect the right to wages (which must be no less than a minimum level as determined by the Minister, by reference to an international benchmark), to annual leave and other kinds of leave, to safe and health working, living and crewing conditions on board ships, dispute resolution and other matters. Workers are protected against unlawful discrimination by the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004*.

Although the *Seafarers Rehabilitation and Compensation Act 1992* will not apply to International Register ships on international voyages, the Bill provides for compulsory insurance for ship owners for compensation in the event of death or long-term disability of a seafarer due to an occupational injury, illness or hazard, and this provision is in accordance with the Maritime Labour Convention.

Freedom of association

Articles 21 and 22 of the International Covenant on Civil and Political Rights, and article 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights protect the right to freedom of association, including the freedom of workers to join and be represented by trade unions.

The Bill provides for collective agreements for seafarers on international voyages, and provides that those collective agreements must form part of (and cannot be limited by) seafarers' individual work agreements. Collective agreements are to be made with the 'seafarers' bargaining unit', which will include all employee organisations that have members on the ship whom they are entitled to represent. This requirement does not limit the right of seafarers to freedom of association, as 'employee organisation' is defined broadly to include any organisation registered under the *Fair Work (Registered Organisations) Act 2009* or recognised under a foreign law as entitled to represent the industrial interests of seafarers.

The right of seafarers on International Register ships to freedom of association is also protected by provisions in the Bill which prevent the victimisation of seafarers for, among other things, making complaints under dispute resolution procedures, participating in collective bargaining, exercising the right to organise and taking industrial action, and joining or refusing to join an employee organisation.

Conclusion

The Bill is compatible with human rights because it is part of a legislative framework which protects the human rights of seafarers on International Register ships. When those ships are undertaking international voyages, that framework includes (but is not limited to) the provisions of the Bill and Part II of the *Navigation Act 1912*.

Minister for Infrastructure and Transport, the Hon Anthony Albanese, MP

NOTES ON CLAUSES

Clause 1 – Short title

This is a formal provision specifying the short title of the Act.

Clause 2 – Commencement

This specifies the commencement dates of the provisions of the Act.

Clause 3 – Schedule(s)

This is a standard clause explaining that each Act referred to in the Schedules to this Act has been amended or repealed as detailed by the relevant provisions in this Act, and that any other provisions in the Schedules to this Act have effect according to their terms.

Schedule 1—The Australian International Shipping Register

Part 1—Amendments

Shipping Registration Act 1981

Items 1 to 3, 5 to 6, 8 to 12 and 14 to 17 – Subsection 3(1)

These items provide for a number of new definitions to be included in the *Shipping Registration Act 1981*, primarily to distinguish between the Australian General Shipping Register (the General Register) and the Australian International Shipping Register (the International Register). These are self explanatory.

Item 4 – Subsection 3(1)

This item provides for a new definition of *fixed fee* in the *Shipping Registration Act 1981*. This should be read with items 24 (section 15), 25 (sections 15C and 15D), and 55 of Part 1 of Schedule 1, and item 1 of Schedule 4.

In concert with item 1 of Schedule 4, this provision confirms the ability of the Australian Maritime Safety Authority (AMSA) to set fees of this kind by Determinations under the *Australian Maritime Safety Authority Act 1990*, rather than these fees being set by regulations. Setting fees via Determinations is a more efficient process and, as fees are determined on a cost recovery basis, allows AMSA to react to changing circumstances in a timely manner.

Item 7 – Subsection 3(1)

This item defines the term *predominantly used to engage in international trading*. This is to allow the use of this terminology in other parts of the Act to reinforce the policy intent behind the establishment of the International Register – that is, the International Register is intended to be an alternative register to the General Register for ships that spend the majority of their time participating in the international trades. It is not intended for those who are primarily engaged in the domestic shipping trades be it coastal trading (as defined in the *Coastal Trading (Revitalising Australian Shipping) Bill 2012*) or intra-State trading.

Item 13 – Subsection 3(1)

This item includes a new definition of *resident of Australia* or *Australian resident*. This prevents companies that have not been incorporated in Australia from being able to be defined as a *resident of Australia* or an *Australian resident*. The effect of this item will, for example, prevent foreign companies that own or operate small craft from being able to register those vessels in the General Register under section 14 of the Act unless they are co-owned or co-operated with a majority of Australian nationals. If Australian nationals are majority owners or operators of a small craft, the vessel will fall under the definition of an Australian-owned ship according to section 8 of the Act and be eligible for registration in the General Register.

This ensures there is a clear nexus between vessel ownership and Australia, thus preserving Australia's regulatory control of these vessels.

Item 18 – Subsections 3(3) and (4)

This repeals subsection 3(3) of the *Shipping Registration Act 1981* that, in part, defined references in that Act to a resident of Australia. This has been substituted by item 13 in this Act, which provides a new definition of *resident of Australia* or *Australian resident*.

The provisions of subsection 3(4) have been replaced by the definition of *ship entitled to be registered* at item 14 and is, therefore, no longer needed.

Item 19 – Section 3A

This item clarifies that closure or cancellation of registration has the same consequence; that is, a ship ceases to be registered. The distinction between these two processes is that closure of registration is a voluntary process initiated by the owner or appointed agent of a ship, whereas cancellation of registration is a penalty-related process initiated by the Registrar.

Item 20 – Subsection 9(1)

This includes reference to ships that may be registered in the International Register, in addition to the existing reference to ships that may be registered in the General Register.

Item 21 – Subdivision A—Obligation to register Australian-owned ships

This establishes the provisions relating to compulsory registration for Australian-owned ships under a new dedicated Subdivision. Compulsory registration is an obligation that currently exists under the *Shipping Registration Act 1981* and, as such, there is no policy change.

Item 22 – Subsections 12(3B), (3C) and (3D)

This ensures that an owner of a ship does not commit an offence under subsection 12(3) of the Act (ie. owning a ship that is required to be registered under subsection 12(1) but remains unregistered), and that the ship cannot be detained, in any of the following circumstances:

- an application has been made to register the ship in either the General or International Register and the Registrar has not yet made a decision on the application; or
- an application has been made to register the ship in the International Register and the Registrar has made a decision not to register the ship, and either the Registrar has not informed the owner of this decision, or the owner has made an application to have the Registrar’s decision reviewed; or
- the Registrar has made a decision to cancel a ship’s registration in the International Register and either the Registrar has not informed the owner of this decision, or the owner has made an application to have the Registrar’s decision reviewed.

This is because it would be unreasonable to be able to prosecute a person for being in breach of a provision of this Act when the cause of that breach is beyond that person’s control. If an Australian-owned ship is refused registration in the International Register (and if a review of the Registrar’s decision is unsuccessful), however, the applicant will then need to apply to have the ship registered in the General Register.

Item 23 – Subdivision B—The General Register

This establishes the provisions relating to the General Register under a new dedicated Subdivision.

Item 24 – Sections 14 and 15

This outlines which ships may be registered in the General Register and what is required to apply for registration in the General Register. The new definition of *resident of Australia* or *Australian resident* effected by items 3, 13 and 18 mean that foreign companies that own or operate small craft are no longer able to register those vessels in the General Register unless they are co-owned or co-operated with a majority of Australian nationals (for further detail, see item 13 above).

Item 25 – Subdivision C—The International Register

This establishes the provisions relating to the International Register under a new dedicated Subdivision. Section 15A clarifies the object of the International Register. These are to:

- facilitate Australian participation in international trade;
- provide an internationally competitive register to facilitate the long term growth of the Australian shipping industry; and
- promote the enhancement and viability of the Australian maritime skills base and the Australian shipping industry.

Section 15B specifies that registration in the International Register is limited to trading ships, which are defined as ships used in connection with a commercial activity (but not including Government ships, fishing vessels or pleasure craft), that are at least 24 metres in tonnage length. This reflects the policy intent that this Register has been established to facilitate Australia's participation in international trade. Accordingly, the vessel types have been limited to those that are most likely to be involved in these trades.

The new definition of *resident of Australia* or *Australian resident* effected by items 3, 13 and 18 mean that foreign companies that own or operate trading ships that are at least 24 metres in tonnage length are no longer able to register those vessels in the International Register unless they are co-owned with a majority of Australian nationals (for further detail, see item 13 above).

Section 15C outlines that a specific requirement for registration in the International Register is that the application must, among other things, be accompanied by evidence that a collective agreement has been made with the seafarers' bargaining unit in accordance with section 11A of this Act.

Section 15D specifies that the Registrar may also require a surveyor to conduct a pre-registration inspection of a ship that has applied for registration in the International Register prior to making a decision on the application.

The surveyor must not conduct this pre-registration inspection until after the relevant fee for this service has been paid to AMSA.

Subdivision D—Registration

This establishes the provisions relating to registration under a new dedicated Subdivision. It outlines the decision-making process for the Registrar with respect to registering a ship in either the General or International Register.

As long as the provisions of sections 16 (the need for an appropriate certificate relating to the tonnage measurement of a ship) and 17 (no multiple registrations) are met, then the Registrar is obliged to register a ship in the General Register if an application is made under section 15

to do so.

The Registrar has, however, the discretion not to register a ship in the International Register if an application is made under section 15C to do so. This enables AMSA to control the vessels that are on the register, thereby protecting the reputation of the Australian flag.

In making such a decision, though, there a number of matters listed in subsection 15F(2) that the Registrar must have regard to. Other matters may be prescribed by the regulations. The Registrar is obliged to refuse registration in the International Register if he/she is satisfied that the ship will not be predominantly used to engage in international trading, or a collective agreement has not been made with the seafarers' bargaining unit in accordance with section 11A of this Act.

The Registrar can also refuse to register a ship in the International Register if a surveyor is refused access to the ship to conduct a pre-registration inspection. Details of a ship that must be included in the Register may be prescribed by the regulations.

The Registrar must advise applicants in writing of any decision not to register a ship in the International Register, including the reasons for the decision.

Item 26 – Subsection 16(1)

This clarifies that a certificate relating to the tonnage measurement of a ship is required prior to registration in either the General or International Register.

Items 27 and 28 – Section 17

This is simply a change of heading and amendment of existing provisions to clarify that, in addition to the requirement that the Registrar must not register a ship if it is already registered under the law of a foreign country, that no multiple registrations are allowed – that is, a ship cannot be registered in more than one of the General or International Registers, or registered in either of these Registers if it is registered under the law of a foreign country.

Item 29 – Section 18

This section has been deleted because its provisions are now included in subsections 15D(1) and 15D(2).

Item 30 – Section 19

This reflects the fact that there are two Registers under the Act, and that an appropriate registration certificate must be issued in respect of registration of a ship in either Register.

Items 31 to 33 – Section 22B and paragraphs 27(4)(a) and 30(1)(a)

This reflects the existence of the International Register with respect to the granting or otherwise of provisional registration certificates, changing the name of a registered ship, and national colours for Australian-registered ships respectively.

Item 34 – Division 5—Special provisions relating to the International Register

Subdivision A—Conditions of registration in the International Register

This outlines two conditions that the owner or operator must ensure are met by relevant ships registered in the International Register. To clarify, for the purposes of this section, the owner is the person who is registered as the owner of the ship, and the operator includes the person referred to in paragraph (b) of the definition of *owner* in this Act.

The first condition is that, for ships registered in the International Register, the master or chief mate of the ship must be an Australian national or Australian resident, and the chief engineer or first engineer of the ship must be an Australian national or Australian resident. This is because these four positions have been identified as the officers primarily responsible for ship safety.

The second condition is that reasonable steps must be taken for an Australian national or Australian resident to fill the positions of both master and chief engineer, these being the two most senior positions in the deck officer and engineering officer categories respectively.

Failure to meet either of these conditions will be subject to a civil penalty.

Subdivision B—Cancellation of registration in the International Register

This outlines the reasons for the Registrar being able to cancel a ship's registration in the International Register, including the Registrar's belief that a ship has contravened certain specified laws, that the ship has not been, or will not be, predominantly used to engage in international trading, or that a collective agreement that has been made with the seafarers' bargaining unit in accordance with section 11A of this Act is not in effect. Additional laws and/or requirements relating to cancellation of registration may be prescribed by the regulations.

The Registrar must advise applicants of any decision to cancel a ship's registration in the International Register, including the reasons for the decision.

Subdivision C—Basis of registration in the International Register

This explains that the registration of a ship in the International Register may be closed or cancelled under specific provisions of the Act, or closed, cancelled, revoked, terminated or varied by subsequent legislation. It also makes clear that no compensation is payable under any of these circumstances.

Closure of registration is a voluntary process initiated by the owner or appointed agent of a ship, whereas cancellation of registration is a penalty-related process initiated by the Registrar.

Items 35 to 46 and item 48 – Various sections and subsections

These are a series of necessary amendments to existing provisions to reflect the existence of two separate Registers under the Act.

Item 47 – Subsection 48(1)

This explains that, in the course of his or her responsibilities for maintaining the Registers and having control of the Registration Office, the Registrar is subject to the control of AMSA.

Items 49 and 50 – Part V—The Registers

This establishes the General and International Registers, and subsection 56(3) is included merely to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Items 51 to 54 – Subsections 57(1) and (2)

These reflect the existence of two separate Registers under the Act and deletes an obsolete note.

Item 55 – Subsections 57(3), (4) and (5)

This reflects the existence of two separate Registers under the Act. It also confirms AMSA's ability to set certain fees by Determination – see the discussion under item 4 of Part 1 of Schedule 1.

Items 56 to 88 – Various sections and subsections

These are a series of necessary amendments to existing provisions to reflect the existence of two separate Registers under the Act.

Item 89 and 90 – Sections 78 and 78A

This establishes an internal review process, by the Chief Executive Officer (CEO) of AMSA, for decisions made under subsections 15F(1) (about the registration of ships in the International Register) and 33B(1) (about the cancellation of registration of ships in the International Register).

Previous decisions under the Act that were eligible for review by the Administrative Appeals Tribunal (AAT) have not been affected. The decision to restrict appeals about decisions made under subsections 15F(1) and 33B(1) relating to the International Register to an internal review by the CEO of AMSA was based on the need for a timely resolution of these. The duration of a typical AAT process was considered too long for this purpose. In addition, given the highly technical nature of the issues that need to be considered as part of the decision-making process, it was considered that AMSA is best placed to undertake this assessment.

Items 91 to 93 – Paragraphs 83(2)(c), (d) and (f)

These are a series of necessary amendments to existing provisions to reflect the existence of two separate Registers under the Act.

Items 94 and 95 – Subparagraphs 83(2)(t)(iv) and (v)

This removes the ability for the regulations to provide for the imposition and recovery of fees in respect of supplying copies of, or extracts from, the Registers as this is now dealt with under subsections 57(3), (4) and (5).

Item 96 – Subsections 83(5) and 83(5A)

This updates the penalty provisions that may be included in the regulations, including the ability for the regulations to provide for both offences against the regulations and for civil penalties for contraventions of the regulations.

Part 2—Application, saving and transitional provisions relating to Part 1

Item 97

This provides for two new definitions to assist in the interpretation of this Part, both of which are self explanatory.

Item 98

This specifies when Part 1 of Schedule 1, other than item 22, apply to ships that are registered, or are required or entitled to be registered. It also specifies when item 22 applies in respect of applications to register a ship.

Item 99

This explains that the previous Australian Register of Ships will continue to operate and will be renamed the Australian General Shipping Register. It also confirms that the registration of ships registered in the Australian Register of Ships at the time of commencement of this Act will continue in the General Register, and that any reference to “the Australian Register of Ships” in registration certificates granted prior to the commencement of this Act will be regarded as a reference to “the Australian General Shipping Register”.

Item 100

This clarifies that any application for registration in the Australian Register of Ships prior to the commencement of this Act that has not been decided upon will be regarded as an application for registration in the General Register in this Act.

Items 101 to 103

These are regulation saving provisions that clarify that, despite the repeal of certain sections of the *Shipping Registration Act 1981* by this Act, any regulations made for the purposes of those repealed sections that were in operation immediately before the commencement of this Act continue to remain in force as if they were made for the purposes of the relevant replacement sections in this Act.

Item 104

This is a transitioning provision that reflects the fact that there are now two separate Registers under the Act by stating that any reference to “the Register” in regulations that were in force immediately before the commencement of this Act will be regarded as a reference to “the relevant Register”.

Schedule 2—Seafarers

Shipping Registration Act 1981

Items 1 to 4, 6 to 7, and 9 to 11 – Subsection 3(1)

Items 1 to 10 provide for a number of new definitions to be included in the *Shipping Registration Act 1981*, primarily in respect of employment conditions and to ensure consistency with other related pieces of legislation, including the *Navigation Act 1912*. These are mostly self explanatory.

Item 5

The definition of *ITF template agreement* will ensure that the relevant ITF agreement is readily available through AMSA and seeks to reduce any ambiguity as to what ITF template is being used as the basis for minimum wage setting under the Act.

Item 8

The new definition of *owner* largely maintains the previous meanings in the *Shipping Registration Act 1981*, except in relation to section 11A of Schedule 2 (about collective agreements with the seafarers' bargaining unit) and Part VA (about seafarers), where it has the same meaning as in the *Navigation Act 1912*. This meaning has been amended to ensure consistency and compliance with the MLC, which Australia has ratified. The employment provisions in Part VA of this Act have been drafted using MLC standards as a minimum level of protection for seafarers.

Item 12

This explains that, in addition to the work agreement, ship owners have the option of making a collective agreement with the seafarers' bargaining unit (SBU) with respect to the terms and conditions of employment or engagement of all the seafarers working on board the ship when it is used to engage in international trading. However, for ship owners seeking to register a ship in the International Register, it is obligatory to make such an agreement before the ship can be registered in the International Register.

This item also clarifies that the SBU for a ship is a group of people comprising a single representative from each employee organisation that has at least one seafarer member who will work on board the ship when it is used to engage in international trading, and is entitled to represent those seafarer members. The concept of the SBU is to streamline the negotiation process between the ship owner and multiple seafarer representatives. In order to be a member of the SBU, the respective employee organisation representative must provide written notice to the ship owner of their wish to be a member. The ship owner cannot exclude a representative of an employee organisation from the SBU if the requirements of subsection 11A(2) are satisfied.

This item also provides that the *Fair Work Act 2009* does not apply to any collective agreement made under section 11A, and that a collective agreement made under section 11A is not an enterprise agreement for the purposes of the *Fair Work Act 2009*.

Item 13 – Part VA—Seafarers

Division 1—Core provisions

Section 61AA – Application of this Part and other laws to certain ships

This provides that the employment-related legislation specified in this section, including any State or Territory legislation that provides for workers' compensation, will not apply to ships registered in the International Register when they are engaged in international trading (as defined in section 61AB – see below). The regulations may also prescribe other State or Territory legislation that will not apply to these ships in these circumstances. This reinforces the object of the AISR to provide an internationally competitive international register.

Section 61AB – When is a ship used to engage in international trading?

This determines when a ship is used to engage in international trading. The ship must be used in connection with a commercial activity and either:

- pick up passengers and/or cargo at one or more ports in Australia, and take some or all of those passengers and/or cargo to one or more ports in one or more foreign countries; or
- pick up passengers and/or cargo at one or more ports in one or more foreign countries, and take all of those passengers and/or cargo to one or more ports in one or more countries (which includes the same or any other foreign country as well as Australia); or
- undertake an activity for, or in connection to, giving effect to either of the two above scenarios.

When a vessel is undertaking a ballast voyage or is at a port or at anchor in relation to any of the above scenarios it will be considered to be engaged in international trading. In any of the above scenarios, it is not necessary for the passengers to disembark or for the cargo to be unloaded at the destination port(s) to qualify as international trading. However, if any passengers and/or cargo are picked up in Australia, carried to a foreign port(s) and returned to Australia without disembarking/being unloaded, that is not considered to be international trading.

Further, in any of the above scenarios, the ship will not be considered to be engaged in international trading if, at any time during the journey, it is used to engage in coastal or intra-State trading. Coastal trading is defined in section 7 of the *Navigation Act 1912* or the Coastal Trading Act (Revitalising Australian Shipping) Act 2012 once commenced and essentially means, in connection with a commercial activity, the picking up of passengers and/or cargo at one port in a State or Territory and carrying and disembarking/unloading some or all of those passengers and/or cargo at another port or ports in other States or Territories.

Intra-State trading is defined in item 6 of Schedule 2 of this Act as, in connection with a commercial activity, picking up passengers and/or cargo at a port in a State or Territory and taking and disembarking/unloading some or all of those passengers and/or cargo at another port in the same State or Territory.

Division 2—Work agreements

Subdivision A—Application of this Division

Section 61AC – Application of this Division

This clarifies that Division 2 of the Act applies to ships registered in the International Register and to seafarers actually working, or intending to work, on the ship when it is used to engage in international trading as defined above.

Subdivision B—Requirements that apply to work agreements

Section 61AD – Work agreement must comply with this Division

Section 45A of the *Navigation Act 1912* (as amended by Schedule 4 of this Act) requires that each seaman have a work agreement in place when they are on board a ship that is taken to sea. In addition to the requirements outlined in section 45A of the *Navigation Act 1912*, this section clarifies that work agreements must comply with the additional requirements outlined in Subdivision B of this Act when a seafarer is working on board a ship being used in international trading. This is consistent with MLC requirements.

Section 61AE – Wages

This explains that work agreements must contain the amount of the seafarer's wages, or the method for working that out. The MLC does not provide for a minimum wage quantum. Consistent with the policy intent to provide a minimum wage safety net for seafarers, the Bill provides that the amount of wages in the work agreement cannot be lower than the amount determined by the Minister, which, in turn, cannot be less than the amount specified in the ITF template agreement. This agreement will be available on AMSA's website or from AMSA itself.

It places an obligation on the Minister to determine the amount of minimum wages, by legislative instrument, for each category of seafarer. Further, if a new or amended ITF agreement becomes available, the Minister is obliged to revoke the previous determination and make a new determination of minimum wages.

Although it is generally not a legal requirement for the Minister to determine wages by legislative instrument, this method of determining wages was adopted in this case to allow for parliamentary scrutiny of the Minister's wage-setting power, and to maintain consistency with the Minister's obligation to determine the amount of compensation under section 61AM of the Act, which must be by legislative instrument.

Section 61AF – Paid annual leave

This details the paid annual leave entitlements that must be included in the work agreements. The minimum amount of at least 2.5 days of paid annual leave for each month of service was chosen to be consistent with MLC standards. It also clarifies the periods of time that the work agreement cannot treat a seafarer as being on paid annual leave.

Section 61AG – Dispute resolution procedure

This specifies that work agreements must include a dispute resolution procedure for settling disputes arising out of the work agreement itself, Part VA of the amended *Shipping Registration Act 1981*, or Part II of the *Navigation Act 1912*. It also details what the procedure must entitle the seafarer to, including the ability to make a complaint to

independent parties (individuals or bodies) specified in the work agreement.

Subdivision C—Effect of other agreements on the work agreement

Section 61AH – Effect of collective agreement with the seafarers’ bargaining unit

This explains that the terms and conditions of the work agreement will be taken to include the terms and conditions of any collective agreement negotiated with the SBU for seafarers working on board the ship when it is used to engage in international trading, regardless of whether the work agreement was made before or after the collective agreement was made.

It also clarifies that if any of the terms and/or conditions of the collective agreement are less beneficial than those in the work agreement, they will have no effect and the more beneficial terms and/or conditions in the work agreement will prevail.

Section 61AI – Effect of other agreements

This explains that if any agreement (collective or otherwise, but not the work agreement referred to in section 45A of the *Navigation Act 1912*) is negotiated after the commencement of this section with respect to a ship between the ship owner and any party (individual or body) that is not the SBU, and the terms and conditions of that agreement is included in the work agreement, then the terms and conditions of the agreement will have no effect for seafarers working on board that ship when it is used to engage in international trading. This is to ensure the effectiveness of the SBU and to support the aim of streamlining negotiations between the ship owner and multiple seafarer representatives.

Subdivision D—Enforcement of work agreement in relation to wages and annual leave

Sections 61AJ and 61AK

These sections clarify that the owner of a ship is subject to a civil penalty if he/she does not ensure that the seafarer is paid any wages, or entitled to take any annual paid leave, that the seafarer is entitled to under the work agreement.

For this purpose, and as indicated in the definition of *owner* in item 8 of Schedule 2 of this Act, the owner (if not the actual owner) includes a person who has assumed responsibility for the ship from the owner and agreed to take over all the duties and responsibilities of the owner imposed by the *Navigation Act 1912*.

Division 3—Protection against victimisation of seafarers

61AL – Protection against victimisation

This has been included to ensure compliance with the MLC, and applies to ships registered in the International Register and to seafarers who work, or intend to work, on those ships when they are used to engage in international trading. It lists the reasons that a seafarer must not be victimised for, and the actions that constitute victimisation, and imposes a civil penalty on a person who breaches these provisions.

Division 4—Injury etc. of seafarers

61AM – Compulsory insurance for death or long-term disability

This outlines the requirement for owners of ships registered in the International Register to have insurance or indemnity policies that cover them for any liability to pay compensation for the death or long-term disability incurred by a seafarer while on board a ship when it was engaged in international trading. The policy must provide sufficient cover to pay the amount of compensation determined by the Minister.

It places an obligation on the Minister to determine, by legislative instrument, an amount of compensation for the death or long-term disability incurred by a seafarer while on board a ship when it was engaged in international trading. This is the amount that must be covered by the ship owner's insurance or indemnity policy. This amount cannot be less than the amount specified in the ITF template agreement available on AMSA's website or from AMSA itself. Further, if a new or amended ITF agreement becomes available, the Minister is obliged to revoke the previous determination and make a new determination of the compensation amount. This establishes a minimum compensation safety net for seafarers working on board AISR ships engaged in international trading.

61AN – Liability for medical attendance etc.

This limits the period of time for which a ship owner would be liable, under section 127 of the *Navigation Act 1912*, to pay expenses relating to sickness or injury of a seafarer while on board a ship registered in the International Register when it was used to engage in international trading. The ship owner's liability would cease either from the day after the seafarer recovered or 16 weeks after the seafarer became sick or got injured, whichever occurred first. This limitation of liability is to ensure consistency with MLC standards.

61AO – Liability for wages of sick or injured seafarers

This limits the period of time for which a ship owner would be liable, under section 132 of the *Navigation Act 1912*, to pay wages to a seafarer who is injured or becomes sick while on board a ship registered in the International Register when it was used to engage in

international trading. The ship owner's liability would cease either from the day after the seafarer recovered or 16 weeks after the seafarer became sick or got injured, whichever occurred first. This limitation of liability is to ensure consistency with MLC standards.

Schedule 3—Enforcement

Shipping Registration Act 1981

Items 1 to 3

Items 1 to 3 provide for a number of new definitions to be included in the *Shipping Registration Act 1981* for the purposes of expressing enforcement-related provisions in this Schedule. These are self explanatory.

Item 4

Part VB—Enforcement

Division 1—Civil penalty provisions

Subdivision A—Obtaining a civil penalty order

Section 61BA – Civil penalty orders

This section provides that within six years of an alleged contravention of the provisions of this Act, AMSA may apply to a relevant court (as defined in item 3 of Schedule 3 of this Act) for an order that a person who is alleged to have contravened a civil penalty provision of this Act pay a pecuniary penalty.

Pecuniary penalties in this legislation are limited to no more than 300 penalty units for individuals and 1,500 penalty units for bodies corporate. In determining which penalty to apply, the court may take into account various factors, including the nature and extent of contraventions and any loss or damage suffered as a result, the circumstances in which the contravention occurred, and past findings in relation to similar conduct under the provisions of this Act or under the *Crimes Act 1914* or the *Criminal Code* in relation to this Act.

Section 61BB – Civil enforcement of penalty

This clause provides that a pecuniary penalty is a debt due to AMSA on behalf of the Commonwealth. If a court orders payment of a civil penalty, AMSA may enforce the order.

Section 61BC – Conduct contravening more than one civil penalty provision

This section provides that where conduct contravenes two or more civil penalty provisions, proceedings may be instituted against any of those provisions, but the person will only be liable for one pecuniary penalty in relation to the same conduct.

Section 61BD – Multiple contraventions

This section provides that a relevant court can make one civil penalty order for multiple contraventions of a civil penalty provision, if each of the contraventions are founded on the same facts or form a series of contraventions of the same or similar character. The penalty in this case cannot be greater than the maximum total penalty that could be ordered if a separate civil penalty order were made for each contravention.

Section 61BE – Proceedings may be heard together

This section provides that a relevant court can direct that more than one civil penalty proceeding be heard at the same time. Doing so may be in the interest of efficient use of the court's time.

Section 61BF – Civil evidence and procedure rules for civil penalty orders

This section provides that the rules of evidence and procedure for civil matters apply to any proceedings for a civil penalty order in a relevant court.

Section 61BG – Contravening a civil penalty provision is not an offence

This section clarifies that a contravention of a civil penalty provision is not an offence. That is, it is distinct from provisions that may result in criminal prosecution.

Subdivision B—Civil proceedings and criminal proceedings

Section 61BH – Civil proceedings after criminal proceedings

This section provides that where a person is convicted of a criminal offence for conduct under this Act, a relevant court cannot make a civil penalty order for conduct that is the same or substantially the same.

Section 61BI – Criminal proceedings during civil proceedings

This section provides that, if criminal proceedings are underway or commence for an offence under this Act, any proceedings for a civil penalty order against the same person and in relation to conduct that is the same or substantially the same, are stayed. The civil penalty proceedings can be resumed if the person is not convicted of the criminal offence.

Section 61BJ – Criminal proceedings after civil proceedings

This section clarifies that criminal proceedings may be commenced regardless of whether a civil penalty order has been made against the same person for the same or substantially the same conduct.

Section 61BK – Evidence given in civil proceedings not admissible in criminal proceedings

This section provides that evidence given by an individual in civil penalty proceedings against them for conduct that is the same or substantially the same cannot be used in criminal proceedings.

This section does not apply in relation to criminal proceedings pursued for the falsity of any evidence given by the individual during civil penalty proceedings.

Subdivision C—Miscellaneous

Section 61BL – Ancillary contravention of civil penalty provisions

This section provides that anyone who:

- attempts to contravene a civil penalty provision;
- aids in, procures or induces a contravention;
- is knowingly concerned in a contravention of a civil penalty; or
- conspires with others to cause a contravention

will be taken to have contravened the provision.

Section 61BM – Mistake of fact

This section provides that a person will not be liable for a penalty if they can show that they were under a mistaken but reasonable belief about the facts surrounding a contravention, and if the correct understanding of the facts would not have lead to a contravention.

For clarification, this section provides that the circumstances include where a person reasonably believes the circumstances in the present situation to be the same as those in a past situation which did not constitute a contravention.

This section requires a person to prove their own mistake of fact on the balance of probabilities. This is because the defendant in civil penalty proceedings will be much better placed to present evidence about their state of mind with respect to having a mistaken belief.

Section 61BN – State of mind

This section provides that it is not necessary to prove a person’s intention, knowledge, recklessness, negligence or any other state of mind in order to prove a contravention of a civil penalty provision, other than in relation to subsection 61BL(1). However, this section does not affect the operation of section 61BM.

Section 61BO – Civil penalty provisions contravened by employees, agents or officers

This section provides that a body corporate will be held responsible for elements of civil penalty provisions that are contravened by the employees, agents or officers of the body corporate, if those people are acting within the scope of their employment or authority at the time of the contravention.

Section 61BP – Continuing contraventions of civil penalty provisions

This section provides that the maximum penalty will continue to grow, the longer that a person remains in contravention of the civil penalty provision. This is specifically to provide a disincentive to continue to contravene civil penalty provisions.

Division 2—Infringement notices, voluntary enforceable undertakings and injunctions

Subdivision A— Infringement notices

Section 61BQ – When an infringement notice may be given

This clause provides that AMSA can give an infringement notice when it reasonably suspects a person has committed a strict liability offence under the Act.

The infringement notice must be given within 12 months after the day on which the offence is allegedly committed and can only relate to a single contravention of a single offence provision unless:

- the provision requires the person to do something within or by a specified time; and
- the person fails or refuses to do that thing within or by that time; and
- the failure or refusal occurs on more than one day; and
- each contravention is due to a failure or refusal on one of those days.

The requirement that notices must be issued within 12 months of the alleged offence is included so that recipients have a reasonable chance to defend the allegations if charged. It is anticipated that infringement notices will usually be given very soon after the day the contravention is alleged to have occurred. This is because infringement notices are intended to serve principally as a warning that a provision of the Act has been contravened. Serious offences will be pursued through the courts, and will not be remedied using infringement notices.

Section 61BR – Matters to be included in an infringement notice

This section sets out matters that must be included in an infringement notice. These matters include information that will help to identify the particular infringement notice, the relevant authorised officer, the person the infringement notice is issued to, and the circumstances of the infringement. Other information that is required includes details about the recipient's rights in dealing with the infringement notice including how and when to pay, avenues to appeal the notice, and circumstances when the notice might be withdrawn.

Section 61BS – Extension of time to pay amount

This section provides that the recipient of an infringement notice may apply to AMSA for an extension to pay an infringement notice penalty, and AMSA may grant an extension at its discretion as many times as it sees fit. If AMSA does not grant the extension, the recipient will still have at least seven days to pay the penalty, following notice of AMSA's decision.

A decision made by AMSA under this section is not reviewable by an external merits review, as the decision to issue an infringement notice itself is not subject to external merits review, and AMSA's decision is not a final determination of rights.

Section 61BT – Withdrawal of an infringement notice

This section provides that a person can make representations in writing, requesting that AMSA withdraw an infringement notice.

AMSA may withdraw an infringement notice at its discretion, whether or not the person has made written representations. In making that decision, AMSA must take into account the applicant's written representations (if any), and may also consider other factors including the circumstances of the alleged contravention, any prior contraventions and/or convictions and any other matter considered relevant.

The person must be advised in writing of any withdrawal, with a withdrawal notice that includes details which will identify the person and the infringement notice. The withdrawal notice must state that proceedings may be instituted against the individual. If a penalty has already been paid under the notice, it must be refunded.

A decision made by AMSA under this section is not reviewable by an external merits review, as the decision to issue an infringement notice itself is not subject to external merits review, and AMSA's decision is not a final determination of rights.

Section 61BU – Effect of payment of amount

This section provides that if a person pays the amount of an infringement notice penalty and the infringement notice is not withdrawn, then any liability for the offence is discharged. No proceedings, whether criminal or civil, may be brought against the person for the same

conduct. Payment of the infringement notice penalty is not considered as admission of guilt by the person, and the person is not regarded as having committed an offence.

Section 61BV – Effect of this Division

This section clarifies the effect of requirements under Schedule 3, Division 2 for infringement notices, in order to ensure compliance with part 6 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

In particular, this section provides that infringement notices are not required for any alleged contravention of an offence, and are issued at the discretion of AMSA.

It also provides that the availability of infringement notices does not affect the liability of a person for alleged contraventions of an offence, unless they pay the infringement notice penalty. In particular, if a person is not given an infringement notice, or if they are given a notice but they do not comply with it or it is subsequently withdrawn, their liability for an alleged contravention is not affected. The availability of infringement notices does not limit a court's discretion in setting penalty amounts if a person is found to have contravened an offence.

In addition, no part of the infringement notice scheme limits the amount of infringement notices that may be given to a person. Nothing prevents AMSA from giving a person two or more infringement notices, for two or more alleged offences.

Subdivision B— Enforceable undertakings

Section 61BW – Acceptance of undertakings

This section provides that AMSA may accept enforceable undertakings from liable persons about their compliance with the Act or associated provisions. A person may, for example, undertake to do a particular thing directed to compliance with their obligations under the Act, or to not do specific things which are not in compliance with the Act.

Enforceable undertakings are a useful tool for AMSA to promote compliance, without the need to take court action. They are used extensively by other national economic regulators.

Section 61BX – Enforcement of undertakings

This section provides that where AMSA considers that the person has breached any of the terms of the undertaking, it may apply to a relevant court for an order:

- directing the person to comply with the term of the undertaking;
- directing the person to pay AMSA an amount up to the amount of any financial benefit reasonably attributable to the breach of the term of the undertaking;

- directing the person to compensate any other person who has suffered loss or damage as a result of the breach; and
- any other orders.

Subdivision C—Injunctions

Sections 61BY to 61BZC

These sections include a power for AMSA to apply for an injunction if a person contravenes, or intends to contravene, a civil penalty provision. AMSA may apply for a restraining injunction if a person is taking action to contravene a civil penalty provision, or performance injunction if a person is failing to take any action.

A relevant court's power to issue an injunction is not limited by the court's view of the person's future intent or the person's past actions in relation to the injunction being considered. AMSA may also apply for an interim injunction if it considers the matter urgent; AMSA is not required to give any undertaking as to damages for an interim injunction. A relevant court may discharge or vary an injunction. The powers in the Act are in addition to any other powers of the relevant court.

Division 3—Civil jurisdiction of courts

Section 61BZD – Civil jurisdiction of courts

This section clarifies the jurisdiction of relevant courts in relation to civil matters arising out of Part VB of the Act, and any limits that apply to those jurisdictions.

Schedule 4—Other amendments

Australian Maritime Safety Authority Act 1990

Item 1

This amends the definition of *charge* in the *Australian Maritime Safety Authority Act 1990* to include fees in respect of applications for registration in the General and International Registers, and in respect of inspecting those Registers. This confirms AMSA's ability to set certain fees by Determination – see the discussion under Item 4 of Part 1 of Schedule 1.

Marine Navigation (Regulatory Functions) Levy Collection Act 1991

Item 2

This includes a definition of *Australian International Shipping Register* in the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991*.

Item 3

This amends the definition of *sea-going ship* in the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* to include a ship registered in the International Register. This is necessary to avoid any doubt that AMSA is able to collect levies from ships registered in the International Register.

Items 4 and 5

These amend the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* to enable AMSA to collect levies from ships registered in the International Register on a quarterly basis, wherever they may be located.

Navigation Amendment Act 2011

Item 6

This amends the commencement dates of provisions in the *Navigation Amendment Act 2011* (the Amendment Act). The primary purpose of the Amendment Act is to ensure that the *Navigation Act 1912* is fully compliant with the MLC. Many of the provisions in the Amendment Act were scheduled to commence on 1 January 2013. A number of these have been brought forward to 1 July 2012 to coincide with the commencement date of this Act. This is to ensure that provisions in the *Navigation Act 1912* that are applicable to ships registered in the International Register are fully compliant with the MLC from the commencement date of this Act. These provisions will not apply to vessels on the General Register from 1 July 2012.

Item 7

This amends the definition of *owner* in the Amendment Act to ensure consistency and compliance with the MLC.

Item 8

This amendment simplifies the provision in the Amendment Act relating to work agreements and aligns the terminology of work agreements across this Act, the *Navigation Act 1912* and the MLC.

Items 9 and 10

These items delete a number of items in the Amendment Act that are no longer required because of the amendments to the commencement dates of certain provisions of the Amendment Act effected by item 6 of Schedule 4 of this Act.

Item 11

This amendment extends the powers of AMSA surveyors to allow them to inspect a ship, and require relevant documents to be produced, to ascertain its compliance with Part VA of the amended *Shipping Registration Act 1981* relating to the working and living conditions of seafarers on board the ship and of the master of the ship. It also allows AMSA surveyors to inspect a ship, and require relevant documents to be produced, to ascertain its compliance with the conditions of registration in the International Register, as detailed in section 33A of the amended *Shipping Registration Act 1981*.

Item 12

This provision clarifies that amendments to the commencement dates of provisions in the Amendment Act that result in a commencement date of 1 July 2012 only apply with respect to ships that are registered in the International Register. Any such amendments also apply to ships that are registered in the General Register, but from 1 January 2013.