

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 158**

Issued under the authority of the Minister for Infrastructure and Transport

*Shipping Registration Act 1981*

*Shipping Registration Amendment Regulation 2012 (No. 2)*

Subsection 83(1) of the *Shipping Registration Act 1981* (the SR Act) provides that the Governor-General may make regulations, not inconsistent with the SR Act, prescribing matters required or permitted by the SR Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the SR Act.

The SR Act was amended by the *Shipping Registration Amendment (Australian International Shipping Register) Act 2012* (the AISR Act) to provide for the establishment of a new Australian International Shipping Register (the International Register), its operation, administration and seafarer employment conditions. The AISR Act also effectively renamed the previous Australian Register of Ships to the Australian General Shipping Register (the General Register).

The *Shipping Registration Regulations 1981* (the Principal Regulations) set out the requirements for registering a ship in Australia, including the application process, entry of particulars into the Register, grant of registration certificates and related matters.

The Regulation amends the Principal Regulations to reflect the establishment of the International Register, including detailing the application requirements for registration in the either the General or International Register, and prescribing separate forms for these registers. The Regulation prescribes grounds for, and procedural matters relating to, cancellation of registration in the International Register, as well as procedural matters relating to the review of such a decision to cancel registration.

The Regulation also organises the Principal Regulations into separate thematic Parts for ease of understanding and administration.

Details of the Regulation are set out in the [Attachment](#).

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

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

This legislative instrument is compatible with human rights as it does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

No formal consultation was undertaken specifically in relation to these amendments to the Principal Regulations as they are of a relatively minor or machinery nature, primarily extending the scope of the Principal Regulations to reflect the existence of the International Register. However, extensive stakeholder consultations were undertaken in relation to the amendments to the *Shipping Registration Act 1981* that created the International Register.

The Regulation commenced on 1 July 2012 to coincide with the date of effect of the *Shipping Registration Amendment (Australian International Shipping Register) Act 2012*.

## **Statement of Compatibility with Human Rights**

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

### **Shipping Registration Amendment Regulation 2012 (No. 2)**

The Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Regulation**

The Regulation amends the *Shipping Registration Regulations 1981* to reflect the establishment of the Australian International Shipping Register (the International Register) and effective renaming of the existing Australian Register of Ships to the Australian General Shipping Register (the General Register). The amendments include detailing the application requirements for registration in either the General or International Register, and prescribing separate forms for these registers. The Regulation prescribes grounds for, and procedural matters relating to, cancellation of registration in the International Register, as well as procedural matters relating to the review of such a decision to cancel registration. The Regulation also organises the *Shipping Registration Regulations 1981* into separate thematic Parts for ease of understanding and administration.

### **Human rights implications**

This Regulation does not engage any of the applicable rights or freedoms.

### **Conclusion**

The Regulation is compatible with human rights as it does not raise any human rights issues.

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

**Details of the *Shipping Registration Amendment Regulation 2012 (No. 2)***

**Regulation 1 – Name of Regulation**

Section 1 provides that the title of the Regulation is the *Shipping Registration Amendment Regulation 2012 (No. 2)*.

**Regulation 2 – Commencement**

Section 2 provides that the Regulation commenced on 1 July 2012.

**Regulation 3 – Amendment of *Shipping Registration Regulations 1981***

Section 3 provides that Schedule 1 amends the *Shipping Registration Regulations 1981*.

**Schedule 1 – Amendments**

**Item 1 – Before regulation 1**

Item 1 provides for a new Part 1—Preliminary, which includes regulations 1 to 6A on definitions and other matters of clarification.

**Item 2 – Regulation 2**

Item 2 inserts a new definition of “builder’s certificate”, which is a certificate that complies with the requirements detailed in Regulation 8 of the *Shipping Registration Regulations 1981*.

**Item 3 – Regulation 2**

Item 3 inserts a new definition of “declaration of ownership and nationality”, which is a document or documents that comply with the requirements detailed in Regulation 9 of the *Shipping Registration Regulations 1981*.

**Item 4 – Regulation 2**

Item 4 inserts a new definition of “overseas registration certificate”, which is an equivalent document to a registration certificate issued under Australian registration law, but that has been issued under the registration law of another country.

**Item 5 – Regulation 2**

Item 5 inserts a new definition of “overseas registration law”, which are the provisions of a law of a country other than Australia that relate to the registration of ships in that country.

**Item 6 – After subregulation 2(2)**

Item 6 inserts a new subregulation 2(3) that clarifies that a reference to a ship being registered in Australia means a ship being registered under the *Shipping Registration Act 1981* (in either

the Australian General Shipping Register or the Australian International Shipping Register), and that a reference to a ship being registered overseas means a ship being registered under the registration law of another country.

## **Item 7 – Regulation 7**

Item 7 provides for a new Part 2—Registration of ships, which includes regulations 7AA to 22D, and new Division 1—Registration, which includes regulations 7AA to 11. It also inserts new regulations 7AA, 7, 7A, 7B and 7C.

Regulation 7AA clarifies that Division 1 of the Regulations applies to an application to register a ship in either the General or International Register.

Regulation 7 provides that an application to register a ship must be made in writing to the Registrar of Ships (the Registrar) and signed by the ship's owner. It prescribes the information that must be contained in the application and, if all the information listed cannot be supplied, that the application must state what information could not be provided and why it could not be provided.

Regulation 7A prescribes the supporting documents that an applicant for registration must submit to the Registrar. The regulation also states that the applicant must submit a licence or other document authorising the use of a call sign (a unique designation to identify the ship) in relation to the ship, and that the applicant must submit all the necessary documentation outlined in the regulation within six months of lodging the application for registration. Failure to comply with the requirements of this regulation within the six month timeframe constitutes grounds for refusal of the application by the Registrar.

Regulation 7B defines the “identification document” referred to in subparagraph 7A(1)(e) for an application for registration of a ship. There are three different definitions of this document – one for ships that have been registered in Australia, another for ships that have been registered overseas, and another for ships that have never been registered. The definitions are self explanatory.

Regulation 7C defines the “ownership document” referred to in subparagraph 7A(1)(f) for an application for registration of a ship. There are three definitions of this document – one for ships that have been registered in Australia, another for ships that have been registered overseas, and another for ships that have never been registered. The definitions are self explanatory. The regulation also prescribes alternative documents that may be regarded as an “ownership document” if, after taking all reasonable action, an owner cannot obtain a document otherwise detailed in this regulation. The regulation would also define “transfer documents” as a bill of sale, or a similar document, that has the effect of transferring ownership of the ship and that meets the requirements detailed in this regulation.

## **Item 8 – Regulation 9**

Item 8 removes a reference to previous subparagraph 7(1)(b)(iv) consequential to the replacement of regulation 7 by item 7.

### **Item 9 – Subregulation 11(1)**

Item 9 amends subregulation 11(1) to replace “the purposes of section 18” with “subsection 15E(1) or 15F(1)” consequential upon amendments made to the SR Act by the AISR Act.

### **Item 10 – Regulation 12**

Item 10 provides for a new Division 2—Registration certificates, which includes regulations 12 to 19. It also substitutes regulation 12, which indicates the Form (prescribed by the Regulations) with which a registration certificate granted under the SR Act must accord, and provides a new version consequential upon amendments made to the SR Act by the AISR Act.

### **Item 11 – Subregulation 14(2)**

Item 11 substitutes subregulation 14(2), which indicates the Form (prescribed by the Regulations) with which a provisional registration certificate granted under the SR Act must accord, and provides a new version consequential upon amendments made to the SR Act by the AISR Act.

### **Item 12 – Subregulation 19(2A)**

Item 12 substitutes subregulation 15(1), which indicates the Form (prescribed by the Regulations) with which a provisional registration certificate granted under the SR Act must accord, and provides a new version consequential upon amendments made to the SR Act by the AISR Act.

### **Item 13 – Before regulation 20**

Item 13 provides for a new Division 3—Identification, which includes regulations 20 and 21.

### **Item 14 – Before regulation 22**

Item 14 provides for a new Division 4—Nationality and national colours, which includes regulation 22.

### **Item 15 – Before regulation 23**

Item 15 provides for a new Division 5—Special provisions relating to the International Register, which includes regulations 22A to 22D. It also inserts new regulations 22A, 22B, 22C and 22D.

Regulation 22A prescribes laws for subparagraph 33B(1)(a)(iv) of the SR Act as amended by the AISR Act.

Regulation 22B prescribes grounds for cancelling a ship’s registration in the International Register for paragraph 33B(1)(e) of the SR Act as amended by the AISR Act.

Regulation 22C prescribes requirements in relation to cancelling a ship’s registration in the International Register for subsection 33B(3) of the SR Act as amended by the AISR Act.

Regulation 22D provides for the review of a decision by the Registrar to cancel a ship's registration in the International Register under subsection 78A(2) of the SR Act as amended by the AISR Act. It provides that an application may be made to the CEO of the Australian Maritime Safety Authority to review the Registrar's decision to cancel a ship's registration and details the timeframe within which the application must be made, what requirements the application must meet, what the CEO is obliged to do upon receipt of the application, and the timeframe within which the CEO must respond and the consequences of not doing so. It also inserts a definition of "CEO".

Item 15 also provides for a new Part 3—Transfers, transmissions, security interests and other dealings, which includes regulations 23 to 28A.

### **Item 16 – Before regulation 28B**

Item 16 provides for a new Part 5—The Register of Ships, which includes regulations 28B to 35.

### **Item 17 – Subregulation 31(5)**

Item 17 substitutes subregulation 31(5), which indicates the Form (prescribed by the Regulations) with which a provisional registration certificate granted under the SR Act must accord, and provides a new version consequential upon amendments made to the SR Act by the AISR Act.

### **Item 18 – Paragraph 33A(1)(b)**

Item 18 amends paragraph 33A(1)(b) to replace "oars." with "oars;" to facilitate the inclusion of an additional prescribed class of ship inserted by item 19.

### **Item 19 – After paragraph 33A(1)(b)**

Item 19 inserts paragraph 33A(1)(c) to include ships on demise charter (an arrangement for the hiring of a ship whereby no administration or technical maintenance is included as part of the agreement) to Australian-based operators as a prescribed class of ship for subsection 68(4) of the SR Act. Prescribed ships, or class of ships, in this case are not subject to the provisions of section 68 of the SR Act, which prohibits unregistered ships from leaving Australia.

### **Item 20 – Subregulation 31(5)**

Item 20 provides for a new Part 7—Transitional provisions, which includes regulations 36 to 41.

### **Item 21 – Schedule 2, forms 2 and 3**

Item 21 substitutes forms 2 and 3, which are a registration certificate and a provisional registration certificate respectively, with new versions consequential upon amendments made to the SR Act by the AISR Act.