

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 197

(Issued by the authority of the Minister for Employment and Workplace Relations)

Fair Work Amendment Regulation 2012 (No. 2)

Sections 32 and 33 of the *Fair Work Act 2009* (the Fair Work Act) provide that the Governor-General may make regulations modifying the application of the Fair Work Act in relation to Australia's territorial sea and extending the application of the Fair Work Act to the exclusive economic zone (EEZ) and the waters above the continental shelf.

The regulation amends the *Fair Work Regulations 2009* (the Principal Regulations) to ensure that the Fair Work Act continues to apply to ships engaging in coastal trading, following commencement of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) and the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (Coastal Trading Transition Act) (together, the coastal trading legislation) on 1 July 2012.

The Fair Work Act currently applies to certain ships in Australia's territorial sea, the EEZ and in the waters above the continental shelf while they are engaged in coastal trading under the licensing and permit system established by the *Navigation Act 1912* (Navigation Act).

Relevantly, under the Principal Regulations, the Fair Work Act applies to a ship if it is issued:

- a licence;
- a continuous voyage permit (CVP); or
- a single voyage permit (SVP) where either:
 - two or more SVPs were issued for the ship in the preceding 12 months, or
 - a CVP was issued for the ship in the preceding 15 months.

The effect of the Fair Work Act applying to these ships is that seafarers working regularly in the Australian coastal trade have the benefit of Australian workplace relations laws and a legislative safety net of employment terms and conditions.

The Coastal Trading Act provides for a new framework of general licences, temporary licences and emergency licences for coastal trading from 1 July 2012. This new framework replaces the existing licensing and permit system under the Navigation Act. The Coastal Trading Transition Act provides for transitional arrangements regarding licences or permits in force under the Navigation Act as at 1 July 2012 (and for applications pending for such licences or permits) and provides for the issue of transitional general licences.

The regulation ensures that the Fair Work Act continues to apply to certain ships engaged in coastal trading in Australia's territorial sea, in the EEZ and in the waters above the continental shelf.

The regulation makes transitional arrangements to ensure that ships operating under either a licence or permit issued under the Navigation Act prior to 1 July 2012, or under the Coastal Trading Transition Act, continue to be covered by the Fair Work Act for a transitional period while the relevant licence or permit is in operation.

Details of the regulation are included in the Attachment.

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

The regulation commences on the day after registration.

ATTACHMENT**Details of *Fair Work Amendment Regulation 2012 (No. 2)*****Section 1 – Name of regulation**

This section sets out the name of the regulation as the *Fair Work Amendment Regulation 2012 (No. 2)*.

Section 2 – Commencement

This section provides that the regulation commences on the day after it is registered.

Section 3 – Amendment of *Fair Work Regulations 2009*

This section provides that Schedule 1 to the regulation amends the *Fair Work Regulations 2009* (the Principal Regulations).

Schedule 1 – Amendments**Item [1] – Regulation 1.15B, definition of coastal trading**

This item inserts a definition for ‘coastal trading’ which has the meaning given by section 7 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Coastal Trading Act). Under that section, a ship engages in coastal trading if it carries passengers or cargo in connection with commercial activity in certain specified scenarios.

Item [2], Regulation 1.15B, definition of *continuous voyage permit*

This item inserts a definition for ‘continuous voyage permit’ which means a continuing permit issued under section 286 of the *Navigation Act 1912* (Navigation Act) as in force immediately before 1 July 2012 or a continuing permit granted under the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (Coastal Trading Transition Act) in relation to an application made under the Navigation Act before commencement of the Coastal Trading Act on 1 July 2012, which had not been decided by the Minister by 1 July 2012.

The definition of continuous voyage permit is relevant to item 12.

Item [3], Regulation 1.15B, definition of *emergency licence*

This item inserts a definition for the new ‘emergency licence’ which has the meaning given by subsection 6(1) of the Coastal Trading Act. Under that subsection, an ‘emergency licence’ is a licence to engage in coastal trading for a period of up to thirty days in relation to an emergency as prescribed by the *Coastal Trading (Revitalising Australian Shipping) Regulations 2012* (Coastal Trading Regulations).

Regulation 4.3.1 of the Coastal Trading Regulations prescribes the kind of emergency as being one that:

- involves an event that endangers, or threatens to endanger, life, property or the environment, and
- requires a significant and coordinated response, and
- involves a cyclone, an earthquake, a flood, a landslide, a mudslide, a storm surge, a thunderstorm, a tornado, a tsunami or a wildfire.

Item [4] – Regulation 1.15B, definition of *emergency licensed ship*

This item inserts a new definition for ‘emergency licensed ship’ which means a ship used to undertake a voyage authorised by an emergency licence. An emergency licence is issued to a person in relation to specified voyages rather than in relation to a particular ship. This means that a ship will be covered by the Fair Work Act when it is undertaking a voyage authorised by the emergency licence.

‘Voyage’ has the meaning given by subsection 6(1) of the Coastal Trading Act and means the movement of a ship from one port to another in a way that satisfies the meaning of engaging in ‘coastal trading’ as defined in item 1.

Items [5] – Regulation 1.15B, definition of *general licence*

This item inserts a definition for the new ‘general licence’ which means a licence granted or renewed under the Coastal Trading Act that allows a ship registered in the Australian General Shipping Register to engage in coastal trading for up to five years.

The Australian General Shipping Register is established under the *Shipping Registration Act 1981*.

Item [6] – Regulation 1.15B, definition of *general licensed ship*

This item inserts a definition for ‘general licensed ship’ which means a ship in relation to which a general licence has been issued and is in force, and which engages in coastal trading under that licence.

Item [7] – Regulation 1.15B, definition of *licensed ship*

This item omits the reference to ‘licensed ship’ from regulation 1.15B.

Item [8] – Regulation 1.15B, definition of *majority Australian-crewed ship*

This item modifies the definition of ‘majority Australian crewed ship’ to omit the references to ‘licensed ship’ or ‘a permit ship’ and replace them with references to ‘emergency licensed ship, general licensed ship, transitional general licensed ship or temporary licensed ship’.

Item [9] – Regulation 1.15B, definition of *permit ship*

This item omits the definition of ‘permit ship’ from regulation 1.15B.

Item [10] – Regulation 1.15B, definition of *single voyage permit*

This item inserts a definition for ‘single voyage permit’ which means a single voyage permit issued under section 286 of the Navigation Act which was in force immediately before 1 July 2012 or a single voyage permit granted under the Coastal Trading Transition Act in relation to an application made under the Navigation Act before 1 July 2012 which had not been decided by the Minister by 1 July 2012.

The definition of single voyage permit is relevant to item 12.

Item [11] – Regulation 1.15B, definition of *temporary licence*

This item inserts a definition for the new ‘temporary licence’ which means a licence granted or varied under the Coastal Trading Act to engage in coastal trading involving at least five voyages over a twelve month period. Any ship used to undertake a voyage authorised by a temporary licence must be registered on the Australian International Shipping Register or under a law of a foreign country.

The Australian International Shipping Register is established under the *Shipping Registration Act 1981*.

Item [12] – Regulation 1.15B, definition of *temporary licensed ship*

This item inserts a definition for ‘temporary licensed ship’.

Under section 28 of the Coastal Trading Act, temporary licences are granted to a person regarding particular voyages and not to a particular ship. The regulation would define ‘temporary licensed ship’ to mean a ship used to undertake a voyage authorised by a temporary licence if, within the preceding 12 months before commencing that voyage, the ship commenced at least two other voyages authorised by a temporary licence.

The regulation includes in the definition of ‘temporary licensed ship’ a ship used to undertake a voyage authorised by a temporary licence if:

- in the preceding 12 months before commencing that voyage, the ship commenced at least one other voyage authorised by a temporary licence and was issued with a single voyage permit (as defined in item 10); or
- in the preceding 12 months before commencing that voyage, the ship was issued with at least two single voyage permits; or
- in the preceding 15 months before commencing that voyage, the ship was issued with a continuous voyage permit (as defined by item 2).

This ensures that ships regularly engaged in the coastal trade remain covered by the Fair Work Act in the transition from the licensing and permit system under the Navigation Act to the new licensing framework under the Coastal Trading Act and the Coastal Trading Transition Act.

Item [13] – Regulation 1.15B, definition of *transitional general licence*

This item inserts a new definition for ‘transitional general licence’. A transitional general licence is a licence granted or renewed under the Coastal Trading Act following an application under the Coastal Trading Transition Act. It is a licence for a ship registered under a law of a foreign country that has an existing licence issued under the Navigation Act.

Item [14] – Regulation 1.15B, definition of *transitional general licensed ship*

This item inserts a new definition for ‘transitional general licensed ship’ which means a ship in relation to which a transitional general licence has been issued and is in force and which engages in coastal trading under the licence.

Item [15] – Paragraphs 1.15D (a) to (d)

This item substitutes the references to ships issued with licences or permits under the Navigation Act with references to ships issued with or operating under licences under the Coastal Trading Act or the Coastal Trading Transition Act for the purposes of applying the Fair Work Act to those ships in Australia’s territorial sea.

Item [16] – Subregulations 1.15E (1) to (4)

This item substitutes the references to ships issued with licences or permits under the Navigation Act with references to ships issued with or operating under licences under the Coastal Trading Act or the Coastal Trading Transition Act for the purposes of extending the application of the Fair Work Act to these ships in the EEZ and the waters above the continental shelf.

Item [17] – Subregulation 1.15E (5)

This item renumbers the subregulation in accordance with the substitution in item 16.

Item [18] – Regulation 1.15E, note

This item omits the references to licensed ships and permit ships in the note to regulation 1.15E and replace them with references to emergency licensed ships, general licensed ships, temporary licensed ships and transitional general licensed ships.

Item [19] – After regulation 1.15F

This item inserts a new regulation 1.15G to provide that the amendments made to the Principal Regulations by this amendment regulation do not apply to ships operating under a licence or permit issued under the Navigation Act immediately before the commencement of the amendment regulation.

Regulation 1.15G will continue to apply regulations 1.15B, 1.15D and 1.15E of the Principal Regulations, as they were prior to the amendment regulation, to licences or permits granted under the Navigation Act before 1 July 2012, or granted under the Coastal Trading Transition Act after that time, for the period the licence or permit remains in force.

Statement of Compatibility with Human Rights

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

Fair Work Amendment Regulation 2012 (No. 2)

This 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 Legislative Instrument

The purpose of this legislative instrument is to amend the *Fair Work Regulations 2009* (the Principal Regulations) consequential on the commencement of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) and associated regulations and the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (Coastal Trading Transition Act) on 1 July 2012.

The *Fair Work Act 2009* (Fair Work Act) currently applies to certain ships in Australia's territorial sea, or in the exclusive economic zone (EEZ) or in the waters above the continental shelf while they are engaged in coastal trading pursuant to a permit or licence issued under the *Navigation Act 1912* (Navigation Act). The Coastal Trading Act and associated legislation replaced the licence and permit system in the Navigation Act with a new framework of licences from 1 July 2012.

The amendment regulation ensures the continued Fair Work Act coverage of certain ships in Australia's territorial sea, or in the EEZ and in the waters above the continental shelf while are engaged in coastal trading under a licence issued pursuant to the Coastal Trading Act or the Coastal Trading Transition Act from 1 July 2012, and continued Fair Work Act coverage of certain ships in Australia's territorial sea, or in the EEZ or in the waters above the continental shelf while they are engaged in coastal trading under an existing permit or licence under the Coastal Trading Transition Act.

Human rights implications

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

Conclusion

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

The Hon William Richard Shorten MP

Minister for Employment and Workplace Relations