Interaction between the Coastal Trading Act and the Seacare Legislation

Prepared as part of the Seacare Authority’s submission to the Australian Government’s Options Paper: Approaches to regulating coastal shipping in Australia

Purpose


2. This document provides information for Seacare scheme stakeholders about the interactions between the Coastal Trading Act, the Seafarers Act and the OHS(MI) Act. It has been prepared in light of the Australian Government’s Options Paper: Approaches to regulating coastal shipping in Australia (Options Paper) released on 8 April 2014, which may lead in due course to repeal of, or amendments to, the Coastal Trading Act.

3. The document is not intended to analyse economic or commercial factors related to coastal shipping. Rather, it deals with the interactions between the Coastal Trading Act on the one hand and the Seacare legislation on the other, in order to assist Seacare scheme stakeholders in understanding the potential impact of the repeal of, or amendments to, the Coastal Trading Act on the Seacare legislation. It does this by:
   (a) comparing, in some detail, the relevant legislative provisions before 1 July 2012 and from that date onwards;
   (b) providing some information from Seacare scheme data to give some measure of the practical impact of the changes made on 1 July 2012 to the Seacare jurisdiction.

4. Attachment A has been prepared to give a side-by-side comparison of the main legislative provisions, before and after the changes that took effect on 1 July 2012 by virtue of the Amending Act.

5. This document should not be taken to be providing legal advice.

The Options Paper

6. The following is a brief description of the content of the Options Paper.

7. At a general level, the Options Paper raises the question of whether the provision of maritime transport services should be regulated differently to the provision of other transport services in Australia. Another general question is whether access to coastal trade needs to be regulated at all. If so, what should be the key policy objectives of regulation?

8. The first specific option discussed in the Options Paper is to remove all regulation of access to coastal trading by repealing the Coastal Trading Act in its entirety and making no other amendments to Commonwealth legislation.
9. The second specific option is to repeal the Coastal Trading Act, but introduce or make amendments to other Commonwealth legislation to adjust and address vessels’ interaction with other regulatory regimes.

10. The third specific option is to continue to regulate coastal trade, but take steps to minimise industry burden and costs. This option is focused on the temporary licence regime.

The relevant legislation, before 1 July 2012

Navigation Act

11. The Navigation Act 1912 (Navigation Act) contained provisions concerning the “coasting trade”. Section 7 provided that a ship was deemed to be engaged in the “coasting trade” for the purposes of the Navigation Act if it took on board passengers or cargo at any port in a State/Territory, to be carried to, and landed or delivered at, any other port in the same State/Territory or in any other State/Territory (with various qualifications and exclusions). The concept of “coasting trade” appeared not to be intended to limit the constitutional reach of the Navigation Act, in that it contemplated trade and commerce that is not covered by the inter-state trade and commerce head of power.¹

12. Section 10 of the Navigation Act incorporated the “coasting trade” concept by limiting the coverage of Part II of the Act to:
   (a) a ship registered in Australia;²
   (b) a ship (other than a ship registered in Australia) engaged in the “coasting trade”; or
   (c) a ship (other than a ship registered in Australia or engaged in the coasting trade) with a sufficient connection to Australia in terms of the crew and the operator.

13. Part VI of the Navigation Act contained sections 284-293A and provided for a licensing regime for ships engaging in the “coasting trade”. Licences were available for 3 years. Unlicensed ships were able to apply to the Minister for a permit to engage in the “coasting trade”, which could be granted for a single voyage or on a continuing basis. Regardless of whether a ship was engaged in the “coasting trade” under a licence or a permit, all seafarers employed on board the ship were entitled to be paid wages at Australian rates for the period the ship was engaged in the “coasting trade”. The Governor-General had the ability, subject to a “public interest” test, to suspend the operation of any of the sections of Part VI, either in relation to a single ship or in relation to a class of ships.

Shipping Registration Act

14. Section 12 of the Shipping Registration Act 1981 (Shipping Registration Act) required all Australian-owned ships to be registered under that Act. Section 8 defined an

¹ The function of ensuring constitutional validity was probably served by section 2 of the Navigation Act, which stated, amongst other things, that the Act did not apply in relation to a trading ship proceeding on a voyage other than an overseas voyage or an inter-state voyage (unless the application of section 2 was expressly excluded, as in section 8AA).
² A ship registered in Australia was defined in section 7A to mean a ship that was registered under the Shipping Registration Act 1981, or which was required to be so registered. See next heading.
“Australian-owned” ship as a ship with prescribed types of ownership with sufficient connection to Australia.

15. However, section 13 exempted certain ships from registration, including ships less than 24 metres in tonnage length.

16. Section 14 of the Shipping Registration Act set out certain ships that were able to be registered, notwithstanding that they were exempt under section 13 or were not required to register under section 12.

17. The actual register, called the Australian Register of Ships, was created by section 56 of the Shipping Registration Act.

**Seafarers Act**

18. The coverage of the Seafarers Act was affected only indirectly by the “coasting trade” concept in the Navigation Act. This was via the definition of “prescribed ship” in section 3 of the Seafarers Act to mean a ship to which Part II of the Navigation Act applied, thus incorporating the criteria in section 10 of that Act.

19. It was not necessary for the concept of “prescribed ship” in the Seafarers Act to limit the constitutional scope of the Seafarers Act. This was because the concept of “prescribed ship” was used in the coverage provision in section 19 only in combination with other concepts which did provide appropriate constitutional delimiters.

20. Thus section 19(1) limited the coverage of the Seafarers Act to a “prescribed ship” that was engaged in types of trade or commerce that triggered the inter-state trade and commerce head of power, the head of power for trade and commerce with other countries and the territories head of power. Section 19(1A) extended the coverage of the Seafarers Act to a “prescribed ship” within certain categories with alternative satisfactory constitutional bases. Section 19(2)-(5) further extended the coverage of the Seafarers Act to various situations not related to the concept of “prescribed ship” but with clear constitutional bases.

**OHS(MI) Act**

21. The comments in paragraphs 18-20 above, with some minor modifications, applied equally to the coverage provisions for the OHS(MI) Act in section 6 of that Act.

**The relevant legislation, from 1 July 2012 onwards**

**Navigation Act**

22. The Amending Act removed the regulation of the “coasting trade” in Part VI of the Navigation Act through licences and permits (see paragraph 13 above); Part VI was repealed as a whole. As a corollary, the definition of “coasting trade” in section 7 of the Navigation Act (see paragraph 11 above) became unnecessary and was also removed.

23. Section 10 of the Navigation Act was amended by replacing the reference to a ship engaged in the “coasting trade” with a reference to a ship used to engage in coastal trading (within the meaning of the new Coastal Trading Act) under a general licence.
Coastal Trading Act and Shipping Registration Act

24. The Coastal Trading Act introduced a new regulatory regime for “coastal trading”, which interacted with new types of registration under the Shipping Registration Act.

25. The key concept in the Coastal Trading Act was “coastal trading” itself. Section 7 provided that a vessel was engaged in “coastal trading” if, in connection with a commercial activity, it took on board passengers or cargo at a port in a State/Territory and carried the passengers or cargo to a port in another State/Territory where some or all of the passengers disembarked or some or all of the cargo was unloaded (with various qualifications and exclusions). Note that the inter-state component makes this definition clearly capable of supporting the constitutional validity of the Coastal Trading, under the inter-state trade and commerce head of power.

26. Section 12 of the Coastal Trading Act, headed “Application to vessels on intrastate voyages”, created the ability for the Minister to declare that a particular vessel was covered by the Act despite the disembarkation of passengers or unloading of cargo being in the same State/Territory where the passengers or cargo were taken on board.

27. The Coastal Trading Act then created a licensing regime for vessels to engage in coastal trading, upon application to the Minister:

   (a) A “general licence” was available to any vessel registered in the Australian General Shipping Register. When the vessel was engaged in coastal trading, each seafarer on the vessel was required to be an Australian citizen, hold a permanent visa or hold another visa that permitted the seafarer to undertake the relevant work. See sections 13 and 21.3

   (b) A “temporary licence” was available to vessels registered in the Australian International Shipping Register or under a law of a foreign country. An applicant was required to specify at least 5 voyages within a 12 month period that it was proposed the vessel would undertake. See sections 28 and 40. Further sections provided a mechanism intended to allow vessels holding a “general licence” to compete for the coastal trading business of vessels holding a “temporary licence”.

   (c) An “emergency licence” was available to vessels registered in the Australian General Shipping Register, in the Australian International Shipping Register or under a law of a foreign country. It was only available in case of an emergency of the specified kind and upon explaining why the voyage(s) could not be undertaken by a vessel holding a general licence. See sections 64 and 72.

Details of licences granted by the Minister were required to be published on the Department’s website.

28. It is relevant to set out some details of amendments made to the Shipping Registration Act at the same time. The obligation in section 12 on all Australian-owned ships to be registered under the Shipping Registration Act remained unchanged, as did the general exemption in section 13. However, new provisions were introduced, to the following effect:

3 The Amending Act also provided for the issue of a “transitional general licence”, which was available only to vessels registered under a law of a foreign country which had a licence issued under the “coasting trade” provisions of the Navigation Act. For the purposes of Commonwealth legislation, a ship with a “transitional general licence” was to be treated as a ship with a “general licence”.

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(a) A new Australian General Shipping Register was created. Registration was available to all Australian-owned ships, as well other ships with the specified relationship to Australia. See sections 14 and 56(1).

(b) A new Australian International Shipping Register was also created. Only “trading ships” that were at least 24 metres in tonnage length were able to apply for registration. Of those, registration was available to all Australian-owned ships, as well other ships with the specified relationship to Australia. See sections 15B and 56(2).

29. In addition, the Amending Act inserted a new section 61AA into the Shipping Registration Act. This provided, amongst other things, that the Seafarers Act did not apply at any time to ships registered on the Australian International Shipping Register.

Seafarers Act

30. The definitions section of the Seafarers Act was amended to incorporate reference to the types of concepts in the Coastal Trading Act and Shipping Registration Act described in paragraphs 27-28 above.

31. The changes to the Navigation Act, specifically section 10, had an indirect effect on the scope of the Seafarers Act coverage provisions which relied on the concept of “prescribed ship” (see paragraphs 18-20 above). The reference in the amended section 10 of the Navigation Act to a ship used to engage in coastal trading under a general licence meant that such a ship could come within the Seafarers Act’s jurisdiction if it met the criteria in section 19(1) or (1A) of the Seafarers Act. However, a note was added after section 19(1) to point to the exclusion of ships on the Australian International Shipping Register from Seafarers Act coverage by virtue of section 61AA of the Shipping Registration Act.

32. More significantly, the Amending Act inserted a new section 19(1AA) into the Seafarers Act, which referred directly to concepts in the Coastal Trading Act and which was not related to the concept of “prescribed ship”. The new provision made the Seafarers Act applicable to:

(a) a vessel that was used to engage in coastal trading under a general licence; or
(b) a vessel that was used to engage in coastal trading under an emergency licence if the vessel was registered in the Australian General Shipping Register.

33. One effect of this new provision was that a vessel used to engage in coastal trading under a general licence was covered by the Seafarers Act, regardless of whether it also met the criteria to be a “prescribed ship”.

OHS(MI) Act

34. The preceding description of the changes to the Seafarers Act essentially applies equally to the coverage provisions in section 6 of the OHS(MI) Act.

35. Notably, however, the newly-inserted coverage provision – section 6(3A) of the OHS(MI) Act, corresponding to section 19(1AA) of the Seafarers Act – extended coverage to a slightly wider category of ships than the Seafarers Act, namely:

(a) a vessel that was used to engage in coastal trading under a general licence; and
(b) a vessel that was used to engage in coastal trading under a temporary licence if the vessel was registered in the Australian International Shipping Register; and
a vessel that was used to engage in coastal trading under an emergency licence if the vessel was registered in the Australian General Shipping Register or the Australian International Shipping Register.

These vessels came within the OHS(MI) Act without needing to meet the criteria for a “prescribed ship”.

36. This wider categorisation reflected the fact that section 61AA of the Shipping Registration Act had no effect on the OHS(MI) Act. Accordingly, ships on the Australian International Shipping Register could be included in section 6(3A). In addition no note corresponding to that inserted into section 19(1) of the Seafarers Act was required.

Summary of legislative changes

37. The key effects of the changes – from the point of view of the Seacare jurisdiction – were:

Section 10 of the Navigation Act

38. The reference in section 10 of the Navigation Act to the “coasting trade” (a concept under the Navigation Act) was changed by the Amending Act to “coastal trading” (a new concept under the Coastal Trading Act). The concepts are not dissimilar, the main difference being the removal of intra-state voyages, subject to inclusion by Ministerial declaration.

39. Section 10 of the Navigation Act continues to be relevant for Seacare coverage because of its incorporation into the definition of “prescribed ship” in the Seafarers Act and OHS(MI) Act.4

40. However, given the similarity between the “coasting trade” and “coastal trading” concepts, it might be expected that the impact of the change would be limited. In this regard, it should be remembered that the “prescribed ship” criterion in the Seafarers Act and OHS(MI) Act is used in conjunction with voyage/trade-based coverage criteria which contemplate intra-territory voyages/trade but not intra-state voyages/trade.

New coverage provisions

41. The Amending Act introduced new coverage provisions into the Seafarers Act and OHS(MI) Act that are independent of the “prescribed ship” test. These relate to vessels used to engage in coastal trading under a general licence (as newly defined under the Shipping Registration Act) as well as certain vessels holding other types of licence.

42. These amendments could be seen as increasing the complexity of the coverage provisions in the Seafarers Act and OHS(MI) Act by requiring the application of two additional and complex pieces of legislation, the Coastal Trading Act and the Shipping Registration Act.

43. It must be remembered that the fact that a ship holds a general licence (or other type of licence) does not automatically mean it comes within the scope of section 19(1AA) of the Seafarers Act or section 6(3A) of the OHS(MI) Act. The ship must also be

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4 The Navigation Act was repealed with effect from 1 July 2013, but it lives on for the purposes of the Seacare Act and OHS(MI) Act “prescribed ship” test.
actually used to engage in “coastal trading”, bringing into play the inter-state voyage-based criteria in section 7 of the Coastal Trading Act. Thus a vessel might hold a general licence, but not come within section 19(1AA) of the Seafarers Act because it does not actually engage inter-state carriage of passengers or cargo.

44. Conceptually, therefore, it might be doubted that the new coverage provisions would significantly increase the coverage of the Seacare scheme; a voyage-based inquiry in relation to the “coastal trading” criterion has been provided as an alternative to a voyage/trade-based inquiry relating to the “prescribed ship” criterion.

Seacare scheme data

Section 10 of the Navigation Act

45. From Seacare scheme data generally, it is not possible to say how many of the ships reporting to the Authority are doing so because of section 10 of the Navigation Act and its reference to the “coasting trade” (before 1 July 2012) or “coastal trading” (from 1 July 2012).

46. As such, it is not possible to say whether the regulation of coastal trading of itself has a specific impact on Seacare coverage. In other words, there is no specific data on how Seacare coverage would be affected if all regulation of coastal trading were removed.

New coverage provisions

47. For the same reason (i.e. paragraph 45), it is not possible to say with any certainty whether the new coverage provisions in section 19(1AA) of the Seafarers Act and section 6(3A) of the OHS(MI) Act had any specific impact on Seacare coverage. However, it can be observed that there was no dramatic increase or decrease from 1 July 2012 in ships reporting to the Authority.

48. In addition, the list of “general licences” on the Department’s website has been examined and compared to information held by the Authority about ships that are covered by the Seafarers Act. This would provide some indication of whether the introduction of the Coastal Trading Act and the related amendment of other legislation has had any practical impact on the Seacare jurisdiction.

49. The overlap is substantial. There are several ships on the list of “general licence” holders which are not reporting to the Authority, but which can be presumed not to undertake inter-state voyages. Other discrepancies are limited. As such, this comparison does not point to the new coverage provisions having any significant impact on Seacare coverage.
## Coastal Trading – Comparison of legislation

<table>
<thead>
<tr>
<th>Before 1 July 2012</th>
<th>From 1 July 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Seafarers Rehabilitation and Compensation Act 1992</strong></td>
<td><strong>Seafarers Rehabilitation and Compensation Act 1992</strong></td>
</tr>
<tr>
<td><strong>3 General definitions</strong></td>
<td><strong>3 General definitions</strong></td>
</tr>
<tr>
<td>In this Act, unless the contrary intention appears:</td>
<td>In this Act, unless the contrary intention appears:</td>
</tr>
<tr>
<td><em>Navigation Act</em> means the <em>Navigation Act 1912</em>.</td>
<td><em>Australian General Shipping Register</em> has the same meaning as in the <em>Shipping Registration Act 1981</em>.</td>
</tr>
<tr>
<td><em>prescribed ship</em> means a ship to which Part II of the Navigation Act applies but does not include a Government ship.</td>
<td><em>Australian International Shipping Register</em> has the same meaning as in the <em>Shipping Registration Act 1981</em>.</td>
</tr>
<tr>
<td><strong>19 Application of Act</strong></td>
<td><strong>19 Application of Act</strong></td>
</tr>
<tr>
<td>(1) This Act applies to the employment of employees on a prescribed ship that is engaged in trade or commerce:</td>
<td>(1) This Act applies to the employment of employees on a prescribed ship that is engaged in trade or commerce:</td>
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<tr>
<td>(a) between Australia and places outside Australia; or</td>
<td>(a) between Australia and places outside Australia; or</td>
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<tr>
<td>(aa) between 2 places outside Australia; or</td>
<td>(aa) between 2 places outside Australia; or</td>
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<tr>
<td>(b) among the States; or</td>
<td>(b) among the States; or</td>
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<tr>
<td>(c) within a Territory, between a State and a Territory or between 2 Territories.</td>
<td>(c) within a Territory, between a State and a Territory or between 2 Territories.</td>
</tr>
<tr>
<td>Note: This Act does not apply if a prescribed ship is a ship registered in the <em>Australian International Shipping Register</em>, see paragraph 61AA(b) of the <em>Shipping Registration Act 1981</em>.</td>
<td>Note: This Act does not apply if a prescribed ship is a ship registered in the <em>Australian International Shipping Register</em>, see paragraph 61AA(b) of the <em>Shipping Registration Act 1981</em>.</td>
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</tbody>
</table>

(1AA) This Act also applies to the employment of employees on: | (1AA) This Act also applies to the employment of employees on: |
<p>| (a) a vessel that is used to engage in coastal trading under a general |</p>
<table>
<thead>
<tr>
<th>Before 1 July 2012</th>
<th>From 1 July 2012</th>
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<tbody>
<tr>
<td><strong>(1A)</strong> In addition, this Act applies to the employment of employees on any prescribed ship that is:</td>
<td><strong>(1A)</strong> This Act also applies to the employment of employees on any prescribed ship that is:</td>
</tr>
<tr>
<td>(a) an off-shore industry vessel in relation to which a declaration under subsection 8A(2) of the Navigation Act is in force; or (b) a trading ship in relation to which a declaration under subsection 8AA(2) of that Act is in force.</td>
<td>(a) an off-shore industry vessel in relation to which a declaration under subsection 8A(2) of the Navigation Act is in force; or (b) a trading ship in relation to which a declaration under subsection 8AA(2) of that Act is in force.</td>
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</table>

**Occupational Health and Safety (Maritime Industry) Act 1993**

### 4 Interpretation

In this Act, unless the contrary intention appears:

**prescribed ship** means a ship to which Part II of the *Navigation Act 1912* applies but does not include:

(a) a ship or off-shore industry mobile unit to which the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* applies; or (b) a Government ship.

**prescribed unit** means an off-shore industry mobile unit that is not self-propelled and is under tow.

**Australian General Shipping Register** has the same meaning as in the *Shipping Registration Act 1981*.

**Australian International Shipping Register** has the same meaning as in the *Shipping Registration Act 1981*.

**coastal trading** has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

**emergency licence** has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

**general licence** has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

**prescribed ship** means a ship to which Part II of the *Navigation Act 1912* applies but does not include:

(a) a ship or off-shore industry mobile unit to which the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* applies; or (b) a Government ship.

**prescribed unit** means an off-shore industry mobile unit that is not self-propelled and is under tow.
6 Application of Act

Before 1 July 2012

(1) This Act applies in relation to a prescribed ship or prescribed unit that is engaged in trade or commerce:
   (a) between Australia and places outside Australia; or
   (aa) between 2 places outside Australia; or
   (b) between the States; or
   (c) within a Territory, between a State and a Territory or between 2 Territories.

(2) Without limiting the operation of subsection (1), this Act applies to:
   (a) the operator of a prescribed ship or prescribed unit described in subsection (1); and
   (b) employees employed on a prescribed ship or prescribed unit described in subsection (1); and
   (c) contractors and other persons working on a prescribed ship or prescribed unit described in subsection (1); and
   (d) manufacturers, suppliers and importers of plant used, or substances used or handled, on a prescribed ship or prescribed unit described in subsection (1).

(3) This Act also applies in relation to:
   (a) an offshore industry vessel in relation to which a declaration under subsection 8A(2) of the Navigation Act 1912 is in force; and
   (b) a trading ship in relation to which a declaration under subsection 8AA(2) of that Act is in force.

From 1 July 2012

temporary licence has the same meaning as in the Coastal Trading (Revitalising Australian Shipping) Act 2012.

6 Application of Act

(1) Unchanged

(2) Unchanged

(3) Unchanged

(3A) This Act also applies to:
   (a) a vessel that is used to engage in coastal trading under a general licence; and
   (b) a vessel that is used to engage in coastal trading under a temporary licence if the vessel is registered in the Australian
### 2 Application of Act

<table>
<thead>
<tr>
<th><strong>Before 1 July 2012</strong></th>
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<tbody>
<tr>
<td><strong>(4)</strong> Without limiting the operation of subsection (3), this Act applies to:</td>
<td><strong>(4)</strong> Without limiting the operation of subsection (3) or (3A), this Act applies to:</td>
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<tr>
<td>(a) the operator of a vessel or ship described in subsection (3); and</td>
<td>(a) the operator of a vessel or ship described in subsection (3) or (3A); and</td>
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<td>(b) employees employed on a vessel or ship described in subsection (3); and</td>
<td>(b) employees employed on a vessel or ship described in subsection (3) or (3A); and</td>
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<tr>
<td>(c) contractors and other persons working on a vessel or ship described in subsection (3); and</td>
<td>(c) contractors and other persons working on a vessel or ship described in subsection (3) or (3A); and</td>
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<tr>
<td>(d) manufacturers, suppliers and importers of plant used, or substances used or handled on, a vessel or ship described in subsection (3).</td>
<td>(d) manufacturers, suppliers and importers of plant used, or substances used or handled on, a vessel or ship described in subsection (3) or (3A).</td>
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(5)-(9) Unchanged

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**Navigation Act 1912**

**2 Application of Act**

(1) Except in so far as the application of this section is expressly excluded by a provision of this Act, this Act does not apply in relation to:

| (a) a trading ship proceeding on a voyage other than an overseas voyage or an inter-State voyage; |
| (b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage; |
| (ba) a fishing fleet support vessel proceeding on a voyage other than an overseas voyage; |
| (c) an inland waterways vessel; or |
| (d) a pleasure craft; or in relation to its owner, master or crew. |

(2) A ship shall, for the purposes of this section, be deemed to be proceeding on a voyage from the time when it is got under way for the purpose of...
<table>
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<td>proceeding on the voyage until the time when it is got under way for the purpose of proceeding on another voyage.</td>
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<tr>
<td>(3) A voyage of an Australian fishing vessel, being a ship that is regularly engaged in making voyages from a port or ports in Queensland, commencing at a port in that State and ending at the same port or another port in that State shall not be taken to be an overseas voyage by reason only that, as an incidental part of its fishing operations on that voyage, the ship calls at a port or ports in Papua New Guinea.</td>
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<tr>
<td>(4) A ship’s voyage is to be taken not to be an overseas voyage for the purposes of this Act if the voyage:</td>
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<tr>
<td>(a) commences in a port in an external Territory; and</td>
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<td>(b) ends at a port in that Territory.</td>
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6 Interpretation

(1) In this Act, unless the contrary intention appears:

**inter-State voyage**, in relation to a ship, means a voyage (other than an overseas voyage) in the course of which the ship travels between:

- (a) a port in a State and a port in another State;
- (b) a port in a State and a port in a Territory; or
- (c) a port in a Territory and a port in another Territory;

whether or not the ship travels between 2 or more ports in any one State or Territory in the course of the voyage.

**overseas voyage**, in relation to a ship, means a voyage in the course of which the ship travels between:

- (a) a port in Australia and a port outside Australia;
- (b) a port in Australia and a place in the waters of the sea above the continental shelf of a country other than Australia;
- (c) a port outside Australia and a place in the waters of the sea above the continental shelf of Australia;
- (d) a place in the waters of the sea above the continental shelf of Australia and a place in the waters of the sea above the continental shelf of a country other than Australia;
- (e) ports outside Australia; or

(1) Unchanged
Before 1 July 2012

(f) places beyond the continental shelf of Australia;
whether or not the ship travels between 2 or more ports in Australia in the course of the voyage.

**trading ship** means a ship that is used, or, being a ship in the course of construction, is intended to be used, for, or in connection with, any business or commercial activity and, without limiting the generality of the foregoing, includes a ship that is used, or, being a ship in the course of construction, is intended to be used, wholly or principally for:

(a) the carriage of passengers or cargo for hire or reward; or
(b) the provision of services to ships or shipping, whether for reward or otherwise;

but does not include a Commonwealth ship, a fishing vessel, a fishing fleet support vessel, an off-shore industry mobile unit, an off-shore industry vessel to which this Act applies, an inland waterways vessel or a pleasure craft.

### 7 Definition of coasting trade

(1) A ship shall be deemed to be engaged in the coasting trade, within the meaning of this Act, if it takes on board passengers or cargo at any port in a State, or a Territory, to be carried to, and landed or delivered at, any other port in the same State or Territory or in any other State or other such Territory:

Provided that a ship shall not be deemed to be engaged in the coasting trade by reason of the fact that it carries:

(a) passengers who hold through tickets to or from a port beyond Australia and the Territories; or
(b) cargo consigned on a through bill of lading to or from a port beyond Australia and those Territories and which is not transhipped to or from any ship trading exclusively in Australian waters which is not licensed under this Act; or
(c) mails between any ports in Australia or in any of those Territories; or
(d) as a passenger:
(i) the owner of the ship or a person who is a servant, or a

From 1 July 2012

7 Definition of coasting trade

Repealed
<table>
<thead>
<tr>
<th>Before 1 July 2012</th>
<th>From 1 July 2012</th>
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</thead>
<tbody>
<tr>
<td>(i) a member of the family, of the owner of the ship; or</td>
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<tr>
<td>(ii) a pilot who is proceeding from his or her home station for the purpose of</td>
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<tr>
<td>meeting a ship requiring the pilot’s services or is returning to his or her</td>
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<td>home station after piloting a ship:</td>
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<tr>
<td>Provided further that the Governor-General may by order declare that the</td>
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<tr>
<td>carrying of passengers or cargo between ports in any Territory, or between</td>
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<tr>
<td>ports in any such Territory and any other Australian ports, or ports in any</td>
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<tr>
<td>other such Territory shall not be deemed engaging in the coasting trade.</td>
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<tr>
<td><strong>Note:</strong> In relation to subparagraph (1)(d)(i), see also subsection 6(8).</td>
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<tr>
<td>(2) In this section, <strong>owner</strong>, in relation to a ship, includes a person who is</td>
<td></td>
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<tr>
<td>the manager or secretary of a body corporate which is the owner of the ship.</td>
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<tr>
<td><strong>7A Ships registered in Australia</strong></td>
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<tr>
<td>A reference in this Act to a ship registered in Australia shall be read as a</td>
<td></td>
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<tr>
<td>reference to a ship registered under the <strong>Shipping Registration Act 1981</strong> and</td>
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<td>as including a reference to a ship that is required to be registered under that</td>
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<tr>
<td>Act but is not so registered.</td>
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<tr>
<td><strong>10 Application of Part</strong></td>
<td></td>
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<tr>
<td>Except so far as the contrary intention appears, this Part applies only to:</td>
<td></td>
</tr>
<tr>
<td>(a) a ship registered in Australia;</td>
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<tr>
<td>(b) a ship (other than a ship registered in Australia) engaged in the coasting</td>
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<tr>
<td>trade; or</td>
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<tr>
<td>(c) a ship (other than a ship registered in Australia or engaged in the coasting</td>
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<tr>
<td>trade) of which the majority of the crew are residents of Australia and which</td>
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<td>is operated by any of the following (whether or not in association with any</td>
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<tr>
<td>other person, firm or company, being a person, firm or company of any</td>
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<tr>
<td>description), namely:</td>
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<tr>
<td>(i) a person who is a resident of, or has his or her principal place of business</td>
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<tr>
<td>in Australia;</td>
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<tr>
<td>(ii) a firm that has its principal place of business in Australia; or</td>
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<tr>
<td>7A Ships registered in Australia</td>
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<tr>
<td><strong>Unchanged</strong></td>
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<tr>
<td><strong>10 Application of Part</strong></td>
<td></td>
</tr>
<tr>
<td>Except so far as the contrary intention appears, this Part applies only to:</td>
<td></td>
</tr>
<tr>
<td>(a) a ship registered in Australia;</td>
<td></td>
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<tr>
<td>(b) a ship that is used to engage in coastal trading (within the meaning of the <strong>Coastal Trading (Revitalising Australian Shipping) Act 2012</strong>) under a general licence (within the meaning of that Act); or</td>
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<tr>
<td>(c) a ship (other than a ship to which paragraph (a) or (b) applies) of which</td>
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<tr>
<td>the majority of the crew are residents of Australia and which is operated by</td>
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<tr>
<td>any of the following (whether or not in association with any other person, firm</td>
<td></td>
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<tr>
<td>or company, being a person, firm or company of any description), namely:</td>
<td></td>
</tr>
<tr>
<td>(i) a person who is a resident of, or has his or her principal place of business</td>
<td></td>
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<tr>
<td>in Australia;</td>
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<tr>
<td>(ii) a firm that has its principal place of business in</td>
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</tbody>
</table>
Before 1 July 2012

(iii) a company that is incorporated, or has its principal place of business, in Australia;
and to the owner, master and crew of such a ship.

From 1 July 2012

Australia; or

(iii) a company that is incorporated, or has its principal place of business, in Australia;
and to the owner, master and crew of such a ship.

Costal Trading (Revitalising Australian Shipping) Act 2012

6 Definitions
(1) In this Act:

coastal trading: see section 7.

emergency licence means a licence granted under Division 3 of Part 4 [which includes section 64].

general licence means a licence granted or renewed under Division 1 of Part 4 [which includes section 13].

temporary licence means a licence granted under Division 2 of Part 4 [which includes section 28] and includes such a licence as varied under that Division.

7 Meaning of coastal trading
(1) For the purposes of this Act, and subject to subsection (2), a vessel is used to engage in coastal trading if, for or in connection with a commercial activity:

(a) the vessel:

   (i) takes on board passengers or cargo at a port in a State or Territory; and

   (ii) carries the passengers or cargo to a port in another State or Territory where some or all of the passengers disembark or some or all of the cargo is unloaded; or

(b) the vessel:

   (i) takes on board passengers or cargo at a port in a State or Territory; and

   (ii) carries the passengers or cargo to a port in the same State or Territory where some passengers disembark or some cargo is unloaded; and
<table>
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<th>Before 1 July 2012</th>
<th>From 1 July 2012</th>
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<tbody>
<tr>
<td>(iii) carries passengers or cargo to a port in another State or Territory where some or all of the passengers disembark or some or all of the cargo is unloaded; or</td>
<td>(iii) carries passengers or cargo to a port in another State or Territory where some or all of the passengers disembark or some or all of the cargo is unloaded; or</td>
</tr>
<tr>
<td>(c) the vessel:</td>
<td>(c) the vessel:</td>
</tr>
<tr>
<td>(i) takes on board passengers or cargo at a port in a State or Territory; and</td>
<td>(i) takes on board passengers or cargo at a port in a State or Territory; and</td>
</tr>
<tr>
<td>(ii) carries the passengers or cargo to a port in the same State or Territory where some or all of the passengers disembark or some or all of the cargo is unloaded; and</td>
<td>(ii) carries the passengers or cargo to a port in the same State or Territory where some or all of the passengers disembark or some all of the cargo is unloaded; and</td>
</tr>
<tr>
<td>(iii) is one in relation to which a declaration under subsection 12(2) is in force.</td>
<td>(iii) is one in relation to which a declaration under subsection 12(2) is in force.</td>
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</tbody>
</table>

(2) Subsection (1) does not apply in respect of the following:

(a) a passenger who:

(i) holds a through ticket to or from a port outside Australia; and

(ii) disembarks at a port in Australia for transit purposes only;

(b) cargo that:

(i) is consigned on a through bill of lading to or from a port outside Australia; and

(ii) is unloaded at a port in Australia for transshipment only;

(c) passengers, or cargo, of a kind prescribed by the regulations for the purposes of this paragraph.

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**Shipping Registration Act 1981**

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

*Australian-owned ship* has the meaning given by section 8.
### Before 1 July 2012

8 Australian-owned ships

(1) A reference in this Act to an Australian-owned ship shall be read as a reference to a ship that:

(a) is owned by an Australian national or Australian nationals, and by no other person;

(b) is owned (otherwise than as described in paragraph (c)) by 3 or more persons as joint owners, where the majority of those persons are Australian nationals; or

(c) is owned by 2 or more persons as owners in common, where more than half of the shares in the ship are owned by an Australian national or Australian nationals.

(2) For the purposes of paragraph (1)(c), where 2 or more persons are joint owners of a share or shares in a ship:

(a) in the case of 2 or more particular shares that are owned by the same persons—the interest of each owner in the shares shall be ascertained by dividing the number of the shares by the number of the owners of the shares; and

(b) in the case of a share to which paragraph (a) does not apply—the interest of each owner in the share shall be ascertained by dividing the number one by the number of the owners of the share;

and, if the sum of the interests so ascertained in respect of all jointly-owned shares in the ship as being interests of an Australian

### From 1 July 2012

- **General Register** means the Australian General Shipping Register.
- **International Register** means the Australian International Shipping Register.
- **trading ship** means a ship for use in connection with a commercial activity, but does not include:
  -(a) a Government ship; or
  -(b) a fishing vessel; or
  -(c) a pleasure craft.

Example: An example of a trading ship is a ship that is used wholly for the carriage of passengers or cargo for hire or reward.

8 Australian-owned ships

Unchanged
Before 1 July 2012

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| national or Australian nationals is a whole number or a whole number and a fraction, such number of those shares as is equal to that whole number shall be deemed to be owned by an Australian national or Australian nationals. | 12 Obligation to register Australian-owned ships
|   | (1) Subject to this Part, every Australian-owned ship shall be registered under this Act. |
|   | (2) Where an Australian-owned ship is operated by a foreign resident under a demise charter, the Authority may, by instrument in writing, exempt the ship during the term of the charter from the requirement to be registered. |
| (3) Where a ship required to be registered is not registered, the owner of the ship is, in respect of each day on which the ship remains unregistered (including the day of a conviction for an offence against this subsection or any subsequent day), guilty of an offence, and, whether or not proceedings are instituted for such an offence, the ship may be detained until registration is effected. | (3) Where a ship required to be registered is not registered, the owner of the ship is, in respect of each day on which the ship remains unregistered (including the day of a conviction for an offence against this subsection or any subsequent day), guilty of an offence, and, whether or not proceedings are instituted for such an offence, the ship may be detained until registration is effected. |
| (3A) An offence under subsection (3) is an offence of strict liability. Note: For strict liability, see section 6.1 of the Criminal Code. | (3A) An offence under subsection (3) is an offence of strict liability. Note: For strict liability, see section 6.1 of the Criminal Code. |
| (4) It is not a defence to a prosecution under subsection (3) that the ship required to be registered is registered under the law of a foreign country. | (3B) The owner does not commit an offence against subsection (3), and the ship may not be detained under that subsection, if:
   (a) the owner has made an application in accordance with section 15 or 15C to register the ship; and
   (b) the Registrar has not made a decision on the application about whether to register the ship under section 15E or subsection 15F(1). |
|   | (3C) The owner does not commit an offence against subsection (3), and the ship may not be detained under that subsection, if:
   (a) the owner has made an application in accordance with section 15C to register the ship in the International Register; and
   (b) the Registrar has made a decision not to register the ship under subsection 15F(1); and
   (c) either:
Before 1 July 2012

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(i) the Registrar has not notified the owner of the decision; or
(ii) the owner has made an application under section 78A for review of the Registrar’s decision, and a decision has not been made on the application.

(3D) The owner does not commit an offence against subsection (3), and the ship may not be detained under that subsection, if:

(a) the Registrar has made a decision to cancel the registration of the ship under section 33B; and
(b) either:
   (i) the Registrar has not notified the owner of the decision; or
   (ii) the owner has made an application under section 78A for review of the Registrar’s decision, and a decision has not been made on the application.

(4) It is not a defence to a prosecution under subsection (3) that the ship required to be registered is registered under the law of a foreign country.

13 Exemptions from registration

Ships less than 24 metres in tonnage length, Government ships, fishing vessels and pleasure craft are exempt from the requirement to be registered under section 12.

14 Ships permitted to be registered

Where application is made as provided by this Act, the following ships shall be registered:

(a) Australian owned ships referred to in section 13;
(b) small craft wholly owned by residents of Australia or by residents of Australia and Australian nationals;
(c) small craft operated solely by residents of Australia or Australian nationals or both;
(d) ships on demise charter to Australian-based operators.

14 Ships that may be registered in the General Register

The following ships may be registered in the General Register:

(a) Australian-owned ships;
(b) small craft that are wholly owned by Australian residents, or by Australian residents and Australian nationals;
(c) small craft that are operated solely by Australian residents, or by Australian nationals, or by both;
(d) ships that are on demise charter to Australian-based operators.

15B Ships that may be registered in the International Register
### Before 1 July 2012

The following ships may be registered in the International Register if they are at least 24 metres in tonnage length:

(a) trading ships that are Australian-owned ships;
(b) trading ships that are wholly owned by Australian residents, or by Australian residents and Australian nationals;
(c) trading ships that are operated solely by Australian residents, or by Australian nationals, or by both;
(d) trading ships that are on demise charter to Australian-based operators.

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### From 1 July 2012

56 **Australian Register of Ships**

(1) For the purposes of this Act, there shall be a register, to be known as the Australian Register of Ships, in which shall be entered all matters required or permitted by this Act to be entered in the Register.

(2) The Register and copies of the Register, or of such part or parts of the Register as the Authority directs, shall be kept at such places as the Authority directs.

56 **The Registers**

(1) There is to be a register, to be known as the Australian General Shipping Register.

(2) There is to be a register, to be known as the Australian International Shipping Register.

(3) The Registers are not legislative instruments.

61AA **Application of other laws to International Register ships**

If a ship is registered in the International Register, then:

(a) the *Fair Work Act 2009* does not apply in relation to when the ship is used to engage in international trading; and

(b) the *Seafarers Rehabilitation and Compensation Act 1992* does not apply in relation to the ship at any time; and

(c) any legislation of a State or Territory that:
   - (i) provides for workers’ compensation; or
   - (ii) is prescribed by the regulations;
   - does not apply in relation to the ship at any time.