

1983 - 1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

SHIPPING REGISTRATION  
AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister representing the Minister for Transport, the Minister for Veterans' Affairs, Senator the Hon. A.T. Gietzelt)

GENERAL OUTLINE

The Shipping Registration Amendment Bill 1984 will amend the Shipping Registration Act 1981.

Of the two principal changes, the first is to increase the number of Australian ships which are exempt from the requirement to register. These ships will still be able to be registered voluntarily. The present provision which exempts commercial ships under 12 metres in length, will be extended to 24 metres in length. This means that all ships, including commercial ships, under 24 metres tonnage length will in future not be required to be registered unless they are proceeding to a place outside Australia.

A consequential change to the Regulations will abolish the requirement for ships under 24 metres which register voluntarily to be measured for tonnage.

Pleasure craft are required to be registered before proceeding overseas. Some owners of pleasure craft are unaware of this and only find out when they are informed shortly before departure that they cannot obtain Customs clearance because the craft are not registered. Registration can be a lengthy process, especially where title searches are required. A new provision in the Act will enable such people to apply for provisional registration for a ship in Australia in much the same way as provisional registration can now be granted to a ship which becomes Australian-owned while overseas.

A number of other changes of a minor nature are to be made, the most important of which is in the introduction of a system of caveats into the legislation for the first time. Under this system, which is widely used in legislation on land titles, a person who has an interest in a ship or share can lodge a caveat with the Registrar. This prevents, for a strictly limited time, the registration of a dealing with the ship or share which might affect that interest. It gives the caveator time to take whatever steps might be necessary, including legal action, to protect his interest.

SHIPPING REGISTRATION AMENDMENT BILL 1984

CLAUSE 1

SHORT TITLE, ETC.

This is the normal formal clause providing for the citation of the Principal Act and the Amending Act.

CLAUSE 2

COMMENCEMENT

This provides for the substantive provisions of the Act to come into operation, either wholly or in stages, on dates to be fixed by Proclamation. This is because several of the proposed amendments will involve amendment of the Shipping Registration Regulations before they can come into operation.

CLAUSE 3

INTERPRETATION

The definition of "small craft" in Section 3 of the Principal Act currently uses the word "length". This is to be changed to "overall length", to distinguish from the new concept of "tonnage length" to be introduced later in the Bill.

Sub-clause 3(b) will add a new sub-section 3(8) to clarify what is included in a reference to a "ship". It will include things on the ship used in or necessary for the operation and safety of the ship.

CLAUSE 4

SHIPS ON DEMISE CHARTER TO AUSTRALIAN-BASED OPERATORS

This clause will insert a new sub-section 9(2) which will clarify what is meant by Australian-based operators of ships on demise charter. The effect will be to exclude an Australian citizen not ordinarily resident in Australia or a body corporate whose principal place of business is outside Australia.

CLAUSE 5

DETERMINATION OF OVERALL LENGTH AND TONNAGE LENGTH OF SHIP

Clause 5 will amend section 10 to provide that what is currently known as "length" of a ship is in future to be known as "overall length". A new concept of "tonnage length" is introduced, determined in accordance with the Shipping Registration Regulations.

CLAUSE 6

EXEMPTIONS FROM REGISTRATION

The amendment of section 13 by Clause 6 will exempt from registration ships less than 24 metres in tonnage length. This means that commercial ships of between 12 metres and 24 metres will be brought into the group of ships not required to be compulsorily registered. Most of these ships operate close to shore, in ports and harbours or on inland waterways.

CLAUSE 7

NEW CERTIFICATES AND PROVISIONAL CERTIFICATES

This clause is consequential on the amendments made by Clause 8.

CLAUSE 8

PROVISIONAL CERTIFICATES GRANTED BY THE REGISTRAR

This clause will insert new provisions (sections 22A and 22B) extending the system of provisional registration certificates.

Proposed sub-section 22A(1) will permit the Registrar, as well as a proper officer overseas, to grant provisional registration for a ship which becomes entitled to be registered while it is at sea or at a foreign port.

Proposed sub-section 22A(2) enables the issue of a provisional registration certificate for a ship which becomes entitled to be registered while at an Australian port, before departing for overseas from that port.

Proposed sub-section 22A(3) deems a ship issued with a provisional certificate to be registered until it arrives at or returns to an Australian port, or 6 months from the grant of the provisional certificate, whichever is the sooner. However, proposed sub-section 22A(4) permits the Registrar to extend the period of 6 months on the application of the shipowner.

Proposed sub-section 22A(5) imposes an obligation upon the holder of a provisional registration certificate to lodge the certificate with the Registrar within 10 days of the:

- first arrival at an Australian port, if the certificate was issued under proposed sub-section 22A(1); or
- first return to an Australian port, if the certificate was issued under proposed sub-section 22A(2).

CLAUSE 8 (cont'd)

The remainder of section 22A provides for the Registrar to grant a further provisional registration certificate.

Proposed section 22B will ensure that the provisional registration system is not misused to obtain customs clearance for a single voyage without there being a clear intention to proceed with full registration of the ship in due course.

CLAUSE 9

REPEAL OF SECTION 24

Clause 9 of the Bill will repeal section 24 which contains provisions relating to the notification of changes in ownership of a ship. These are to be replaced by more comprehensive provisions in a more logical position later in the Act. See Clause 14.

CLAUSE 10

MARKING OF SHIP

Clause 10 provides that a ship shall not be registered without evidence that the ship has been marked as directed by the Registrar. The nature of the marks and the evidence required are to be set out in the Regulations.

CLAUSE 11

REPEAL OF SECTION 35

Clause 11 will repeal section 35 of the Act as a consequence of the repeal in 1983 of section 48 of the Shipping Commission Act, 1956.

CLAUSE 12

TRANSFER OF SHIP, ETC

The object of clause 12 is to amend sub-section 36(2) in order to stipulate a time limit of 14 days for a bill of sale and a declaration of transfer to be lodged with the Registrar. The Registrar is empowered to extend the time for the lodgement of documents in special circumstances.

CLAUSE 13

TRANSMISSION OF SHIP, ETC, BY OPERATION OF LAW

Clause 13 will amend sub-section 37(1) in order to stipulate a time limit of 14 days for the lodgement of a declaration of transmission with the Registrar. The Registrar is empowered to extend the time in special circumstances.

CLAUSE 14

ENDORSEMENT OF REGISTRATION CERTIFICATES

Clause 14 will insert a new section 37A dealing with the endorsement of the registration certificate when a ship or a share in a ship is transferred by a bill of sale or otherwise.

Proposed sub-section 37A(1) requires the registration certificate to be made available to the transferee except where the ship is not at an Australian port, and 37A(2) obliges the transferee to furnish the certificate and associated documents to the Registrar.

Sub-sections 37A(3) and (4) deals with cases where sub-section 37A(1) cannot be complied with and empower the Registrar to require the ship's registered agent to arrange for the production of the registration certificate.

Proposed sub-section 37A(5) will enable the Registrar or proper officer to endorse the registration certificate with details of the change of ownership of the ship or share thereof and return the endorsed certificate to the ship's registered agent or as directed by that agent.

CLAUSE 15

MORTGAGEE TO HAVE POWER OF DISPOSAL

Clause 15 will insert new sub-sections 41(2) and 41(3) to prevent a mortgagee who intends to dispose of the ship or his share from so acting until he has given written notice to the Registrar. The Registrar will notify other mortgagees accordingly.



CLAUSE 16

TRANSFER OF MORTGAGE

Clause 16 will amend sub-section 42(2) in order to stipulate a time limit of 14 days for the lodgement of an instrument of transfer of a mortgage. The Registrar is empowered to extend the time in special circumstances.

CLAUSE 17

TRANSMISSION OF MORTGAGE BY OPERATION OF LAW

The object of clause 17 is to substitute new sections 43 and 44. The new section 43 will stipulate a time limit of 14 days for the lodgement of a declaration of transmission and accompanying evidence. The Registrar is empowered to extend the time in special circumstances.

The new section 44 will stipulate a time limit of 14 days for the lodgement of a mortgage document and evidence of the discharge of a mortgage. The Registrar is empowered to extend the time in special circumstances.

New sub-section 44(2) will cover the situation where the mortgage document is unavailable for lodging with the Registrar. Provision is made for the substitution of a declaration containing details of the ship involved, the mortgage and its discharge .

CLAUSE 18

CAVEATS

Clause 18 will insert new provisions (sections 47A to 47E) which introduce the concept of caveats to shipping registration legislation. The effect is to stop the Registrar from doing anything with the Register which might affect the interest of the person who lodged the caveat, while that caveat is in force.

Proposed sub-section 47A(1) provides for a person claiming an interest in a ship or a share thereof to lodge a caveat, in a prescribed form, with the Registrar.

Proposed sub-section 47A(2) specifies the details which must be given by the caveator.

Proposed sub-section 47A(3) prevents the Registrar from entering a caveat unless it contains an address within Australia for the service of notices.

Proposed sub-section 47A(4) provides for changing the name and address of the caveator.

Proposed sub-section 47A(5) provides that a document is duly served provided that it is posted in accordance with the Shipping Registration Regulations.

Proposed sub-section 47A(6) enables a caveator, his agent, his solicitor or his successor in law to withdraw a caveat.

Proposed sub-section 47B(1) obliges the Registrar to notify particulars of the caveat to each owner or part owner of the ship or a share thereof.

CLAUSE 18 (cont'd)

Proposed sub-section 47B(2) enables a person who is notified to summon the caveator to attend before a Supreme Court of a State or a Territory to show cause why the caveat should not be removed.

Proposed sub-section 47B(3) empowers a Supreme Court to make such order as it deems fit upon proof of summoning of the caveator. An order may be made ex parte if the Court thinks fit.

Proposed section 47C provides that, unless a Court has made an order to the contrary, a caveat lapses 14 days following notification to the caveator that an owner or part owner of the ship or a share thereof has applied for the registration of any transfer or other dealing with the ship or share.

Proposed section 47D prohibits, with specified exceptions, the Registrar from entering any transfer or other dealing while a caveat remains in force.

Proposed section 47E empowers a person who has sustained damage because of a caveat lodged without reasonable cause to seek damages by legal proceedings instituted against the lodger of the caveat.

CLAUSE 19

OBSOLETE OR INCORRECT ENTRIES IN REGISTER

Section 58 of the Act empowers the Minister to require the registered agent or any owner of a ship to furnish information and documents specified by notice.

CLAUSE 19 (cont'd)

Clause 19 will amend this provision to provide that the purely administrative task of seeking information from the owner should be carried out by the Registrar of Ships instead of by the Minister. This would make it consistent with Section 92 of the Act which places responsibility for the certification of the Register upon the Registrar.

Clause 19 will also substitute a new sub-section 58(2) which will oblige the Registrar to inform the Minister of:

- . non-compliance with a notice requiring the furnishing of specified information and documents
- . information or documents furnished which indicate that closure of the relevant ship's registration is justified.

Proposed new sub-section 58(2A) provides that if the Minister is of the opinion that closure of registration is justified, or that an entry in the Register should be made or amended, he may direct the Registrar accordingly.

CLAUSE 20

REGISTERED AGENT

Clause 20 will amend section 64 to ensure that

- . an appointment as the registered agent of a ship must be made at the time a ship is first registered;
- . such an appointment can only relate to one person at one time; and
- . the agent must have a residential address, or an address for service of notices, in Australia.

CLAUSE 21

ALTERATION TO SHIPS

Clause 21 will amend section 65 which deals with alterations to registered ships. As presently worded, section 65 refers to Part II of the Act, which deals with unregistered ships. The amendment will remove this illogicality without affecting the operation of the section.

CLAUSE 22

SHIPS LOST, ETC, OR CEASING TO BE ENTITLED TO BE REGISTERED

Clause 22 will effect a formal amendment of section 66 to provide that following the notification by the owner of a ship to the Registrar of a ship which has been lost, taken by an enemy or no longer in existence, the Registrar shall advise mortgagees of such loss, etc.

CLAUSE 23

OFFENCES - GENERAL

Clause 23 will amend section 74, which categorizes the offences provided for in the Act, to include in the appropriate categories the offences arising from the amending Bill.

CLAUSE 24

REVIEW OF CERTAIN DECISIONS

Section 78 of the Act provides an avenue of appeal to the Administrative Appeals Tribunal against administrative decisions taken pursuant to the Act. Clause 24 will add those new sections of the Act which will contain power to make administrative decisions.

CLAUSE 25

JURISDICTION OF TERRITORY SUPREME COURTS

This is a technical provision which will amend section 81 in order to include references to the jurisdiction conferred on Supreme Courts by sections 47B and 47C relating to caveats.

CLAUSE 26

APPEALS

This technical provision amending section 82 will enable the taking of appeals to the Federal Court of Australia from the decision of a Supreme Court of a State or Territory on new matters arising from the Bill.

CLAUSE 27

VERIFICATION OF PARTICULARS - REGISTERS KEPT UNDER PREVIOUS LAW, ETC.

Clause 27 will amend section 92 which relates to the verification of registers kept under the British Merchant Shipping Act, 1894, as well as making amendments of a formal nature relating to registered agents.

The existing provisions do not permit the removal of a ship's entry from the Register where its owner cannot be contacted. The proposed new provisions will empower the Minister to direct removal where no response is received to a notice published in the "Commonwealth of Australia Gazette" addressed to the registered owner of the ship.

CLAUSE 28

TRANSITIONAL

This formal provision will enable the Registrar to treat documents lodged under specified provisions prior to amendment as if they had been lodged under the relevant amended provision.

CLAUSE 29

APPLICATION OF SECTION 11 OF ADMIRALTY COURT ACT, 1861

Clause 29 will insert a new section 94A which will clarify the application of the Admiralty Court Act, 1861 (Imperial).

The British Act of 1861, which still provides the basis of Admiralty jurisdiction in Australia, included a provision enabling the mortgagee of a British ship to have the ship arrested in an action in rem for breach of the mortgage. Doubt exists as to whether this remedy is still available to a ship registered in Australia. The new section 94A will ensure that it is.

