

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Transport)

**INTERNATIONAL SHIPPING (AUSTRALIAN-RESIDENT
SEAFARERS) GRANTS BILL 1995**

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1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
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(Transport)

A BILL

FOR

**An Act to make provision for the payment of grants to
employers of Australian-resident seafarers on certain
Australian-operated ships**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *International Shipping
(Australian-resident Seafarers) Grants Act 1995*.

2 *International Shipping (Australian-resident Seafarers)*
 Grants No. , 1995

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

**PART 2—EXPLANATION OF EXPRESSIONS USED
IN THIS ACT**

Eligible ship

3.(1) Subject to subsection (2), a ship is an eligible ship if:

- 5 (a) it is a commercial trading ship; and
(b) it is an Australian-operated ship; and
(c) in the case of a ship other than a passenger ship—it has a deadweight tonnage of 2,000 tonnes or more; and
10 (d) in the case of a passenger ship—it is capable of carrying at least 2,000 tonnes of cargo in addition to passengers.

(2) A ship that is a Government ship within the meaning of the *Navigation Act 1912* is not an eligible ship.

Australian-operated ship

4.(1) A reference in this Act to an Australian-operated ship is a reference to a ship that:

- 15 (a) is owned by an Australian national or Australian nationals, and by no other person; or
(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
20 (c) is owned by 2 or more persons as owners in common, where more than one-half of the shares in the ship are owned by an Australian national or Australian nationals; or
(d) is on demise charter to:
25 (i) an Australian national or Australian nationals, and to no other person; or
(ii) 2 or more persons who include an Australian national or Australian nationals, where the Australian national is, or the Australian nationals are, as the case may be, in a position to control the exercise of the rights and powers of the charterers under the charter party.
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(2) For the purposes of paragraph (1)(c), if 2 or more persons are joint owners of a share or shares in a ship, the following rules apply:

- 35 (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 is to be worked out by dividing the number of the shares by the number of the owners of the shares;
(b) in the case of a share to which paragraph (a) does not apply—the interest of each owner in the share is to be worked out by dividing
40 the number one by the number of the owners of the share;

- (c) if the total (worked out under paragraphs (a) and (b)) of the interests in all jointly-owned shares in the ship of an Australian national or Australian nationals is a whole number or a whole number and a fraction, the whole number is to be taken to be the number of shares in the ship owned by an Australian national or Australian nationals. 5

(3) A reference in this section to the ownership of a ship or shares in a ship includes a reference to the beneficial ownership of the ship or shares, as the case may be.

Meaning of international voyage

5.(1) An international voyage is a voyage in the course of which a ship travels between: 10

- (a) a port in Australia and a port outside Australia; or
- (b) a port in Australia and a place in the waters of the sea above the continental shelf of a country other than Australia; or
- (c) a port outside Australia and a place in the waters of the sea above the continental shelf of Australia; or 15
- (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; or
- (e) ports outside Australia; or 20
- (f) places beyond the continental shelf of Australia.

(2) The fact that a ship engaged in a voyage calls at one or more ports in Australia in the course of the voyage does not prevent the voyage being an international voyage.

(3) Subject to subsection (4), any part of an international voyage in which a ship is carrying Australian coastal cargo is not taken into account for the purposes of this Act. 25

(4) Subsection (3) does not apply to a part of an international voyage if, during that part of the voyage:

- (a) the total mass of international cargo on board the ship exceeds the total mass of Australian coastal cargo on board the ship; or 30
- (b) the total volume of international cargo on board the ship exceeds the total volume of Australian coastal cargo on board the ship.

(5) In this section:

Australian coastal cargo means cargo loaded at a port in Australia or at a place in the waters of the sea above the continental shelf of Australia for discharge at another such port or place. 35

international cargo means cargo other than Australian coastal cargo.

(6) Subject to subsection (7), a port in an external Territory is taken to be a port in Australia for the purposes of subsections (1) to (5). 40

(7) Subsection (6) does not apply to a port in an external Territory if, because of a declaration under subsection 7(1) of the *Navigation Act 1912*, the carrying of passengers or cargo between that port and another port in the same Territory, between that port and a port in Australia or between that port and a port in another Territory would not constitute engaging in the coasting trade for the purposes of the *Navigation Act 1912*.

When does a voyage on which cargo is carried begin and end?

6.(1) A voyage on which a ship carries cargo is taken to have begun:

- (a) when the ship first commenced to load cargo to be carried on any part of the voyage; or
- (b) if the ship departed from a port without any cargo for the purpose of loading cargo at another port, when the ship departed from the first-mentioned port.

(2) A voyage on which a ship carries cargo is taken to end when the ship is completely unloaded.

General definitions

7. In this Act, unless the contrary intention appears:

approved form means a form approved by the Secretary in writing.

Australian national means:

- (a) an Australian citizen; or
- (b) a body corporate established by or under a law of the Commonwealth or of a State or Territory; or
- (c) the Commonwealth, a State or a Territory.

Australian-resident seafarer means a seafarer who is, or but for being at sea would be, ordinarily resident in Australia.

authorised person means a person holding an appointment under section 24.

commercial trading ship means a ship that has been constructed for use in relation to any business or commercial activity, but does not include:

- (a) a ship that is used wholly or principally for the provision of services to ships or shipping, whether for reward or otherwise; or
- (b) a ship that is, within the meaning of the *Navigation Act 1912*, a fishing vessel, an inland waterways vessel, a pleasure craft, an off-shore industry vessel or an off-shore industry mobile unit; or
- (c) a ship that is used wholly or principally within a harbour.

crew, in relation to a ship, includes the master of the ship.

demise charter, in relation to a ship, means the demise, letting, hire or delivery of the ship to the charterer under a charter party, by virtue of which the charterer has whole possession and control of the ship (including the right to appoint the crew of the ship).

harbour means a harbour properly so called, whether natural or artificial, and includes an estuary, navigable river, creek, channel, haven, roadstead, dock, pier, jetty or other work in or at which ships can obtain shelter or ship and unship passengers or cargo.

passenger ship means a ship that has been constructed for the carriage of 12 or more passengers. 5

port includes place and harbour.

relevant year means a financial year commencing on or after 1 July 1995.

salary includes wages, but does not include any payment that, under the regulations, is not to be taken into account as salary for the purposes of this Act. 10

sea includes any waters within the ebb and flow of the tide.

seafarer means a person who is employed in any capacity on a ship, on the business of the ship, other than:

- (a) a pilot; or 15
- (b) a person temporarily employed on a ship in port; or
- (c) a person included in the class of persons defined as “special personnel” in section 283 of the *Navigation Act 1912*; or
- (d) a trainee.

seafarer berth, in relation to a ship, means a berth on the ship that is normally used by a seafarer. 20

Secretary means the Secretary of the Department.

trainee includes a cadet, a trainee engineer officer, a trainee integrated rating and a provisional integrated rating.

PART 3—GRANTS TO EMPLOYERS OF AUSTRALIAN-RESIDENT SEAFARERS

Eligibility for grant

5 8. A grant is payable to a person (other than the Commonwealth) who has an eligible employment period in relation to an eligible ship for a relevant year if, during that eligible employment period, the ship was engaged in international voyages for at least the minimum number of days.

Amount of grant

10 9.(1) The amount of the grant payable to a person who has an eligible employment period in relation to an eligible ship for a relevant year is the amount equal to the total of the grant units in respect of seafarer berths on the ship occupied by Australian-resident seafarers during the eligible employment period.

15 (2) The grant unit in respect of a seafarer berth on a ship in relation to an eligible employment period is the amount calculated according to the formula:

$$\frac{\text{Eligible days} \times \text{Notional tax liability}}{365}$$

where:

Eligible days means the number of days in the eligible employment period on which the seafarer berth was occupied by an Australian-resident seafarer.

20 *Notional tax liability* means the amount calculated under section 12 in relation to the berth for the relevant year.

Eligible employment period

10.(1) A person has an eligible employment period in relation to an eligible ship for a relevant year if:

25 (a) the person is an Australian national; and
(b) at any time during the year, the person was the employer of the crew of the ship.

(2) The eligible employment period is:

30 (a) if the person was the employer of the crew of the ship for the whole of the relevant year—the relevant year; or
(b) if the person was not the employer of the crew of the ship for the whole of the relevant year—the period represented by the part of the year for which the person was the employer of the crew of the ship.

Minimum number of days of international voyages

35 11. The minimum number of days for the purposes of section 8 is calculated according to the formula:

Employment period – Repair and lay-up period

2

where:

Employment period means the number of days in the eligible employment period.

Repair and lay-up period means the total number of days during the eligible employment period on which:

- (a) the ship was out of service for repair or maintenance; or
- (b) the ship was laid up.

5

Notional tax liability

12.(1) The notional tax liability in relation to a seafarer berth on a ship for a relevant year is:

10

- (a) in the case of a berth on a ship other than a tanker—the notional basic tax liability in relation to the berth for the year; or
- (b) in the case of a berth on a tanker—the total of:
 - (i) the notional basic tax liability in relation to the berth for the year; and
 - (ii) the notional tanker allowance tax liability in relation to the berth for the year.

15

(2) The notional basic tax liability in relation to a seafarer berth for a relevant year is the amount calculated according to the formula:

$$\text{Basic tax amount} \times \text{Voyage leave multiplier}$$

where:

20

Basic tax amount means the amount calculated in respect of the berth for the year in accordance with subsection (3).

Voyage leave multiplier means the multiplier that, under the regulations, is the voyage leave multiplier applicable to the seafarer berth for the year.

(3) The basic tax amount in respect of a seafarer berth for a relevant year is the amount of income tax that would be payable by an Australian-resident seafarer occupying the berth in respect of the salary payable in relation to the berth for that year if:

25

- (a) the income tax were calculated in accordance with clause 1 of Part I of Schedule 7 to the *Income Tax Rates Act 1986* (the *Rates Act*) as applicable to that year; and
- (b) paragraph (a) of clause 1 of Part I of that Schedule were omitted; and
- (c) the whole of the salary payable in relation to the berth were taxable income within the meaning of the *Rates Act*.

30

(4) The notional tanker allowance tax liability in relation to a seafarer berth for a relevant year is the amount of income tax that would be payable by an Australian-resident seafarer occupying the berth in respect of the total amount of tanker allowance payable in relation to the berth for that year if:

- 5
- (a) the seafarer had occupied the berth for the whole of the year; and
 - (b) the total amount of salary and tanker allowance payable in relation to the berth for the year were taxable income within the meaning of the Rates Act; and
 - 10 (c) paragraph (a) of clause 1 of Part I of Schedule 7 to the Rates Act were omitted: and
 - (d) the income tax were calculated by adding together the amount or amounts calculated:
 - 15 (i) at the highest rate that would be applicable, under clause 1 of Part I of Schedule 7 to the Rates Act, to the taxable income represented by the total amount referred to in paragraph (b) on so much of the tanker allowance as does not exceed the amount of taxable income on which tax would be payable at that rate; and
 - 20 (ii) at the next highest rate that would be so applicable to the taxable income represented by the total amount referred to in paragraph (b) on the remainder of the tanker allowance.

PART 4—PAYMENT OF GRANTS

Application for grant

- 5 **13.** An application for a grant under section 8 must:
- (a) be in writing in accordance with the approved form; and
 - (b) include the information required by the form; and
 - (c) be signed and witnessed as required by section 14; and
 - (d) be given to the Secretary within the prescribed time after the end of the relevant year to which the application relates or within such further time as the Secretary, before or after the end of the prescribed
- 10 time, allows.

Signature and witnessing of applications

- 15 **14.(1)** The following requirements apply to an application for a grant under section 8:
- (a) an application by an individual must be signed personally in the presence of a witness by:
 - (i) the applicant; or
 - (ii) an individual authorised by the applicant to sign applications under this Act on behalf of the applicant;
 - (b) an application by a body corporate must:
 - (i) be under the seal of the applicant; or
 - (ii) be signed personally in the presence of a witness by an individual authorised by the applicant to sign applications under this Act on behalf of the applicant;
 - (c) an application that is required to be signed in the presence of a witness must state the name and address of the witness and contain a declaration signed by the witness stating that the application was signed in the presence of the witness.
- 25
- 30 **(2)** For the purposes of this section, an applicant for a grant under section 8 who is an individual is to be taken to have authorised another individual to sign applications under this Act on behalf of the applicant if, and only if, the authorisation is in the form of a document that:
- (a) is signed personally in the presence of a witness by the applicant; and
 - (b) states the name and address of the witness; and
 - (c) contains a declaration signed by the witness stating that the
- 35 document was signed in the presence of the witness.
- (3)** For the purposes of this section, a body corporate is to be taken to have authorised an individual to sign applications under this Act on behalf of the body if, and only if, the authorisation is under the seal of the body corporate.

Decision on application for grant

15.(1) If a person makes an application in accordance with this Part for a grant in respect of a relevant year, the Secretary must decide, as soon as reasonably practicable, whether the person is entitled to a grant in respect of that year.

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(2) If the Secretary decides that the person is entitled to a grant in respect of a relevant year, he or she must:

- (a) approve payment of the amount of the grant to the person; and
- (b) give the person written notice of the decision and of the amount of the grant.

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(3) If the Secretary decides that the person is not entitled to a grant in respect of a relevant year, he or she must give the person written notice of the decision and of the reasons for the decision.

(4) An approval under subsection (2) must be in writing.

PART 5—MISCELLANEOUS

Power to require persons to answer questions etc.

5 **16.(1)** If an authorised person has reasonable grounds for believing that a person (the *information source*) is capable of giving information relating to the entitlement of a person to a grant under section 8, the authorised person may, by written notice given to the information source, require the information source to attend before the authorised person at a reasonable time and place specified in the notice and there:

- 10 (a) answer questions relating to such matters relevant to the entitlement of the person to a grant under section 8 as are specified in the notice; and
- (b) produce such documents and records relevant to the entitlement of the person to a grant under section 8 as are specified in the notice.

15 **(2)** A notice under subsection (1) that requires a person to produce a document or record must set out the effect of subsection (3).

20 **(3)** A person who, in accordance with a notice under subsection (1), produces a document or record kept, made or prepared by another person that, to the knowledge of the first-mentioned person, is false or misleading in a material particular must, on so producing the document or record, give to the person to whom the document or record is produced a written statement signed by the first-mentioned person or, in the case of a body corporate, by a competent officer of the body corporate:

- 25 (a) stating that the document or record is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in respect of which the document or record is, to the knowledge of the first-mentioned person, false or misleading.

Penalty: Imprisonment for 6 months.

30 **(4)** An authorised person may make and keep copies of, or take and keep extracts from, any document or record produced to him or her under this section.

Offences

35 **17.(1)** A person must not intentionally obtain, or attempt to obtain, a grant under section 8 that is not payable.

Penalty: Imprisonment for 5 years.

(2) A person must not intentionally or recklessly make to the Secretary or another person exercising a power or performing a function or duty in relation to this Act a statement, either orally or in writing, that is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

5

(3) A person must not, without reasonable excuse, refuse or fail to answer a question or produce a document or record when so required by an authorised person under this Act.

Penalty: 30 penalty units.

Conduct by directors, servants or agents

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18.(1) If, in proceedings for an offence against subsection 16(3) or section 17 in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had that state of mind.

15

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of subsection 16(3) and section 17, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

20

(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

25

(4) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State or Territory.

30

(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Time for prosecutions

19.(1) In spite of anything in any other law, proceedings for an offence against this Act may be brought within the period of 3 years after the commission of the offence.

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- (2) Subsection (1) does not apply to an offence against subsection 17(1).

Recovery of grant on conviction

5 **20.(1)** If a person is convicted of an offence against subsection 16(3) or section 17, the court may, in addition to imposing a penalty, order the person to refund to the Commonwealth the amount of any grant wrongfully obtained by the person because of the commission of the offence.

(2) If:

- (a) a court, under subsection (1), makes an order that a person refund an amount to the Commonwealth; and
 - (b) the court has civil jurisdiction to the extent of the amount;
- 10 the order is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

(3) If:

- (a) a court, under subsection (1), makes an order that a person refund an amount to the Commonwealth; and
- 15 (b) either:
 - (i) the court does not have civil jurisdiction; or
 - (ii) the court has civil jurisdiction but not to the extent of the amount to be refunded;

20 the proper officer of the court must issue to the Secretary a certificate in the prescribed form containing the prescribed particulars.

(4) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount to be refunded.

25 **(5)** On registration under subsection (4), the certificate is enforceable in all respects as a final judgment of the court in which it is registered in favour of the Commonwealth.

(6) The costs of registration of the certificate and other proceedings under this section are, subject to the prescribed conditions (if any), taken to be payable under the certificate.

30 **Notification of right to seek review of decision**

21.(1) A notice under subsection 15(2) or (3) must include a statement to the effect that a person affected by the decision may, if dissatisfied with the decision, make application to the Administrative Appeals Tribunal for review of the decision.

35 **(2)** Failure to comply with subsection (1) does not affect the validity of a decision.

Application for review

22. Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Secretary under paragraph 13(d) or subsection 15(1).

Delegation by Secretary

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23.(1) The Secretary may, in writing, delegate to a person holding, or performing the duties of, a Senior Executive Service office in the Department all or any of the Secretary's powers and functions under this Act.

(2) In this section, *Senior Executive Service office* has the same meaning as in the *Public Service Act 1922*.

10

Appointment of authorised persons

24. The Secretary may, in writing, appoint an officer of the Australian Public Service to be an authorised person for the purposes of this Act.

Return for Parliament

25.(1) The Secretary must, as soon as practicable after the end of a financial year commencing on or after 1 July 1996, give the Minister a return setting out:

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- (a) the name and address of each person to whom a grant under section 8 has been paid during that year; and
- (b) the amount of each grant so paid; and
- (c) such other particulars (if any) as are prescribed.

20

(2) The Minister must cause a copy of the return to be laid before each House of the Parliament within 15 sitting days of that House after the return is received by the Minister.

Appropriation

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26. Grants payable under section 8 are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Regulations

27. The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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