

HOUSE OF REPRESENTATIVES

(As read a first time)

SHIPPING REGISTRATION BILL 1981

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1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 26 February 1981

(Minister for Transport)

A BILL

FOR

**An Act providing for the registration of ships in Australia,
and for related matters**

5 BE IT ENACTED by the Queen, and the Senate and the
House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Shipping Registration Act* 1981.

10 **Commencement**

2. This Act shall come into operation on a date to be fixed by
Proclamation.

Interpretation

15 3. (1) In this Act, unless the contrary intention appears—
“Australia” includes the external Territories;

“Australian national” means—

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

“Australian-owned ship” has the meaning given by section 8;

- “Australian ship” means a ship having Australian nationality by virtue of section 29;
- “beneficial interests” includes interests arising under contract and other equitable interests;
- “bill of sale” means a bill of sale referred to in section 36; 5
- “branch office” means a branch office of the Registration Office;
- “Certificate of Clearance” has the same meaning as in the *Customs Act* 1901;
- “Collector of Customs” means a person who is a Collector for the purposes of the *Customs Act* 1901; 10
- “Customs officer” means a person who is an officer for the purposes of the *Customs Act* 1901;
- “demise charter”, in relation to a ship, means the demise, letting, hire or delivery of the ship to the charterer under a charterparty, by virtue of which the charterer has whole possession and control of the ship (including the right to appoint the master and crew of the ship); 15
- “Deputy Registrar” means a Deputy Registrar of Ships referred to in sub-section 48 (2);
- “employee”, in relation to the Australian Public Service, means a person employed under section 82 of the *Public Service Act* 1922; 20
- “fish” includes turtles, dugong, crustacea, molluscs and any other living resources of the sea or of the seabed;
- “fishing vessel” means a ship that is used, or is intended to be used, wholly or principally for the taking, catching or capturing of fish for trading or manufacturing purposes; 25
- “foreign country” means a country other than Australia;
- “foreign port” means a port in a foreign country;
- “foreign resident” means a person other than an Australian national or a resident of Australia; 30
- “Government authority” means—
- (a) the Commonwealth or a State or Territory; or
 - (b) a body corporate established for a public purpose by or under a law of the Commonwealth or of a State or Territory, other than— 35
 - (i) the Australian Shipping Commission;
 - (ii) the Western Australian Coastal Shipping Commission; or
 - (iii) a body corporate that is declared by the regulations not to be a Government authority for the purposes of this definition; 40
- “Government ship” means a ship 12 metres or more in length—
- (a) that belongs to a Government authority or Government authorities, and to no other person;

(b) the beneficial interest in which is vested in a Government authority or Government authorities, and in no other person; or

5

(c) that is for the time being on demise charter to a Government authority or Government authorities, and to no other person;

“lodged” means lodged with the Registrar in accordance with this Act;

10

“master” includes a person having command or charge of a ship, but does not include a pilot;

“mortgage” means a mortgage registered under section 38;

“national flag” means the Australian National Flag within the meaning of the *Flags Act* 1953;

15

“officer” means a person (who may include the Minister) exercising powers, or performing duties or functions, under this Act;

“owner”, except in sections 8, 12 and 30 and in Part VI, means a person registered as owner in accordance with the regulations;

“pilot” means a person who has the lawful conduct of a ship, but does not belong to the ship;

20

“pleasure craft” means a ship that is used, or is intended to be used, wholly for recreational or sporting activities, whether or not let, or intended to be let, for hire or reward or consideration of any kind;

25

“previous law” means Part I of the Imperial Act known as the Merchant Shipping Act, 1894, as amended, or otherwise affected in its operation, by the provisions of any other Imperial Act or of any Act, in so far as that Part as so amended, or otherwise affected in its operation, is part of the law of the Commonwealth;

30

“proper officer” means a person holding, or performing the duties of, any of the following offices (being an office of the Commonwealth) in a country or place outside Australia, namely:

35

- (a) Ambassador;
- (b) Minister;
- (c) Head of a Mission;
- (d) Chargé d’Affaires;
- (e) Counsellor, Secretary or Attaché of an Embassy, Legation or other post;
- (f) Consul-General;
- (g) Consul; or
- (h) Vice-Consul;

40

“provisional registration certificate” means a provisional registration certificate granted under section 21, 22 or 65;

“red ensign” means the Australian Red Ensign within the meaning of the *Flags Act* 1953;

- “Register” means the Australian Register of Ships referred to in section 56;
- “registered” means registered under this Act;
- “registered agent”, in relation to a ship, means the person whose name and address are entered in the Register in respect of that ship in pursuance of section 64; 5
- “Registrar” means the Registrar of Ships referred to in sub-section 48 (1);
- “registration certificate” means a registration certificate, other than a provisional registration certificate, granted under this Act; 10
- “Registration Office” means the Australian Shipping Registration Office referred to in section 54;
- “share”, in relation to a ship, means one of the shares into which the property in a ship is divided as provided by section 11;
- “ship” means any kind of vessel capable of navigating the high seas and includes— 15
- (a) a barge, lighter or other floating vessel;
 - (b) a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another; and 20
 - (c) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water,
- but does not include a vessel, structure, vehicle or craft declared by the regulations not to be a ship for the purposes of this definition; 25
- “ship on demise charter to an Australian-based operator” has the meaning given by section 9;
- “ship permitted to be registered” means a ship permitted to be registered by virtue of section 14;
- “ship required to be registered” means a ship required to be registered by virtue of section 12; 30
- “small craft” means a ship less than 12 metres in length;
- “temporary pass” means a temporary pass granted under section 23;
- “this Act” includes the regulations;
- “unregistered ship” means a ship entitled to be registered that is not registered. 35

(2) In this Act, unless the contrary intention appears, a reference to the owner of a ship shall, if there is more than one owner of the ship, be read as a reference to each of the owners.

(3) A reference in this Act to a resident of Australia shall be read as a reference to— 40

- (a) a person, other than a body corporate, whose permanent place of abode is in Australia, whether or not he is from time to time temporarily absent from Australia;

(b) a person, other than a body corporate, whose domicile is in Australia, unless his permanent place of abode is outside Australia; or

5 (c) a body corporate, wherever incorporated, that has its principal place of business in Australia.

(4) In this Act, unless the contrary intention appears, a reference to a ship entitled to be registered shall be read as a reference to a ship that is required to be registered by virtue of section 12 or permitted to be registered by virtue of section 14.

10 (5) A reference in this Act to failing to do an act or thing shall be read as including a reference to refusing to do that act or thing.

(6) For the purposes of this Act, strict compliance with a prescribed form is not required and substantial compliance is sufficient.

15 (7) A reference in this Act to an offence against this Act, to an offence against a provision of this Act or to a contravention of, or failure to comply with, a provision of this Act shall be read as including a reference to an offence created by section 6, 7 or 7A of the *Crimes Act* 1914 in relation to this Act.

Repeal

20 4. The previous law is repealed.

Act to bind the Crown

25 5. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

Application of Act

6. This Act extends to every external Territory and to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

Act not to apply to Defence Force ships, &c.

30 7. This Act does not apply in relation to a ship belonging to an arm of the Defence Force of Australia or to the naval, military or air forces of a foreign country.

Australian-owned ships

35 8. (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;

40 (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 5
- (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 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. 10

Ships on demise charter to Australian-based operators 15

9. A reference in this Act to a ship on demise charter to an Australian-based operator shall be read as a reference to a ship (not being a ship required to be registered or a ship that may be registered by virtue of paragraph 14 (a), (b) or (c)) on demise charter to—

- (a) an Australian national or Australian nationals, and to no other person; or 20
- (b) 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 charterparty. 25

Determination of length of ship

10. (1) For the purposes of this Act, the length of a ship shall, subject to sub-section (2), be ascertained by measuring the distance between—

- (a) a vertical line passing through a point, being the foremost part of the stem; and 30
- (b) a vertical line passing through a point, being the aftermost part of the stern.

(2) Where, by reason of the nature of the constructional features of a ship, it is, in the opinion of the Registrar, impracticable to ascertain the length of the ship under sub-section (1), the length of the ship shall be ascertained in such manner as the Registrar determines. 35

Registration of property in ships

11. (1) For the purposes of the registration of a ship—

- (a) the property in the ship shall be divided into 64 shares; 40
- (b) subject to paragraph (c), sub-section (2) and section 37, the number of persons registered as owners of the ship shall not at any time

exceed 64, but nothing in this paragraph affects the beneficial interests of any number of persons or of a body corporate represented by or claiming under or through a registered owner (including a registered joint owner);

- 5 (c) any number of persons not exceeding 5 may be registered as joint owners of the ship or of a share or shares in the ship;
- (d) a joint owner of the ship or of a share or shares in the ship is not entitled to dispose of his interest in severalty;
- 10 (e) a person shall not be registered as the owner of a fractional part of a share in the ship; and
- (f) a body corporate shall be registered as owner by its corporate name.

15 (2) For the purposes of paragraph (1) (b), where a share in a ship is jointly owned, or 2 or more shares in a ship are jointly owned by the same persons, the joint owners of that share, or of those shares, as the case may be, shall be treated as constituting one person.

PART II—REGISTRATION OF SHIPS

Division 1—Registration

Obligation to register Australian-owned ships

20 12. (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 Minister may, by instrument in writing, exempt the ship during the term of the charter from the requirement to be registered.

25

(3) Where a ship required to be registered is not registered, the owner of the ship is guilty of an offence, and, whether or not proceedings are instituted for such an offence, the ship may be detained until registration is effected.

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

Exemptions from registration

35 13. Government ships, fishing vessels, pleasure craft and small craft are exempt from the requirement to be registered under section 12.

Ships permitted to be registered

14. 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. 5

Application for registration

15. Subject to this Part, an application for the registration of a ship shall be made in accordance with the regulations.

Tonnage measurement of ship before registration

16. (1) A ship shall not be registered unless and until a certificate relating to the tonnage measurement of the ship issued under, or otherwise having effect by virtue of, the *Navigation Act* 1912 has been lodged with the Registrar. 10

(2) Sub-section (1) does not apply to a prescribed ship, or ships included in a prescribed class of ships. 15

Foreign-registered ships not registrable under this Act

17. (1) The Registrar shall not register a ship under this Act if it is registered under the law of a foreign country.

(2) Where, in relation to a ship that has, at any time, been registered under the law of a foreign country, application is made for the registration of the ship under this Act, the application shall be accompanied by such evidence as the Registrar requires to establish— 20

- (a) that the ship is no longer registered under the law of that country; or
- (b) that steps have been taken, or are proposed to be taken, to close the registration of the ship under the law of that country on or before the registration of the ship under this Act. 25

Entry of particulars in Register

18. The Registrar shall register a ship by entering in the Register such particulars relating to the ship as are prescribed. 30

Division 2—Registration Certificates

Grant of registration certificate

19. Upon the registration of a ship under section 18, the Registrar shall grant a registration certificate in respect of the ship, in the prescribed form, containing the particulars entered in the Register relating to the ship and such other matters as are prescribed. 35

Custody of registration certificate

20. (1) The registration certificate of a ship shall not be used except for the purpose of the lawful navigation of the ship, and shall not be subject to detention by reason of a claim by an owner, mortgagee, charterer, operator or any other person to any title to, lien or charge on, or interest in, the ship.

(2) A person having possession or control of a registration certificate shall not fail, without reasonable excuse, to deliver the certificate on demand to the person entitled to the custody of it for the purposes of the lawful navigation of the ship, or to the Registrar, a Deputy Registrar, a proper officer or any other person entitled by law to require its delivery.

(3) If, in any proceedings in respect of an offence against this section in relation to a registration certificate, the court is of the opinion that the certificate is lost, the court shall make an order to that effect and cause an office copy of the order to be served on the Registrar.

(4) In this section, "registration certificate" includes a provisional registration certificate.

New certificates and provisional certificates

21. (1) Where—

- (a) a registration certificate is mislaid, lost or destroyed; or
- (b) a registration certificate is lodged with the Registrar,

the Registrar shall, upon application made in the manner prescribed, grant a new certificate in substitution for that certificate.

(2) If—

- (a) an event referred to in paragraph (1) (a) occurs while the ship concerned is at a foreign port at which there is a proper officer; or
- (b) such an event occurs while the ship concerned is at sea or at a foreign port at which there is no proper officer and, subsequently, but before arriving at an Australian port, the ship arrives at a foreign port at which there is a proper officer,

the proper officer at that port shall, subject to the regulations, grant a provisional registration certificate in respect of the ship in accordance with the prescribed form.

(3) Subject to sub-section (5), a provisional registration certificate granted in respect of a ship under sub-section (2) has the same effect as a registration certificate until—

- (a) the ship arrives at an Australian port; or
 - (b) the expiration of a period of 6 months commencing on the date on which the certificate was granted,
- whichever first happens.

(4) Where a proper officer grants a provisional registration certificate under this section, he shall forward a copy of the certificate to the Registrar.

(5) If, while a provisional registration certificate granted in respect of a ship under sub-section (2) is in effect, application is made in the manner prescribed, the Registrar may, by notice in writing served on the applicant, extend, in relation to the certificate, the period referred to in paragraph (3) (b) and, in that event, the reference in that paragraph to a period of 6 months shall be read as a reference to that period as so extended. 5

(6) The person who has possession of a provisional registration certificate granted under sub-section (2) shall, within 10 days after the ship first arrives at an Australian port after the grant, lodge the certificate with the Registrar. 10

(7) Upon lodgment of a provisional registration certificate under sub-section (6), the Registrar shall, in his discretion— 15

(a) grant a further provisional registration certificate in respect of the ship; or

(b) grant a new registration certificate in respect of the ship.

(8) A provisional registration certificate granted under paragraph (7) (a) has the same effect as a registration certificate for such period after the date on which the certificate was granted as the Registrar specifies in the certificate. 20

Provisional certificates for ships becoming entitled to be registered when abroad

22. (1) If— 25

(a) while a ship is at a foreign port at which there is a proper officer, it becomes a ship entitled to be registered; or

(b) while a ship is at sea or at a foreign port at which there is no proper officer, it becomes a ship entitled to be registered and, subsequently, but before arriving at an Australian port, it arrives at a foreign port at which there is a proper officer, 30

the proper officer at that port may, subject to the regulations, grant a provisional registration certificate in respect of the ship in accordance with the prescribed form.

(2) Subject to sub-section (4), a provisional registration certificate granted in respect of a ship under this section has the same effect as a registration certificate, and, for the purposes of this Act and of the lawful navigation of the ship, the ship shall be deemed to be registered, until— 35

(a) the ship arrives at an Australian port; or

(b) the expiration of a period of 6 months commencing on the date on which the certificate was granted, 40

whichever first happens.

(3) Where a proper officer grants a provisional registration certificate under this section, he shall forward a copy of the certificate to the Registrar.

5 (4) If, while a provisional registration certificate granted in respect of a ship under sub-section (1) is in effect, application is made in the manner prescribed, the Registrar may, by notice in writing served on the applicant, extend, in relation to the certificate, the period referred to in paragraph (2) (b) and, in that event, the reference in that paragraph to a period of 6 months shall be read as a reference to that period as so extended.

10 (5) The person who has possession of a provisional registration certificate granted in respect of a ship under sub-section (1) shall, within 10 days after the ship first arrives at an Australian port after the grant, lodge the certificate with the Registrar.

15 (6) Upon lodgment of a provisional registration certificate under sub-section (5), the Registrar may grant a further provisional registration certificate in respect of the ship.

20 (7) A provisional registration certificate granted in respect of a ship under sub-section (6) has the same effect as a registration certificate for such period after the date on which the certificate was granted as the Registrar specifies in the certificate and, for the purposes of this Act and of the lawful navigation of the ship, the ship shall be deemed to be registered during that period.

Temporary passes

25 23. (1) Where the Minister is satisfied that, by reason of special circumstances, permission should be granted for an unregistered ship to travel—

- (a) from an Australian port to a foreign port; or
- (b) from a foreign port to another foreign port or to an Australian port,

30 he may direct the Registrar to grant a temporary pass in respect of that ship, specifying the voyage which the ship is authorized to make and the time during which the pass remains valid, and the Registrar shall grant the pass accordingly.

(2) A temporary pass shall be in the prescribed form.

35 (3) A temporary pass granted in respect of a ship has, subject to the matters specified in the pass, the same effect as a registration certificate and, for the purposes of this Act and of the lawful navigation of the ship on the voyage specified in the pass, the ship shall be deemed to be registered.

Change in ownership of ship or share

40 24. (1) Where a change occurs in the registered ownership of a ship or a share in a ship, the person having possession of the ship's registration certificate shall, in such manner, and within such time after the change occurs, as are prescribed, lodge the certificate with the Registrar, together

with a statement in accordance with the regulations setting out particulars of the change.

(2) As soon as practicable after lodgment of the registration certificate and statement, the Registrar shall endorse on the certificate, and enter in the Register, particulars of the change of ownership. 5

Use of improper certificate

25. A person who, in relation to a ship, whether or not it is a registered ship, uses, or permits the use of, a registration certificate, provisional registration certificate or temporary pass not legally granted and in force under this Act in respect of the ship is guilty of an offence. 10

Division 3—Identification

Marking of ship

26. (1) A ship shall not be registered until it has been marked in accordance with the regulations.

(2) Subject to sub-section (4), if the markings placed on a registered ship in accordance with the regulations are not maintained, the owner and master of the ship are each, in respect of each day during which the markings are not maintained (including the day of a conviction under this sub-section or any subsequent day), guilty of an offence punishable upon conviction— 15

- (a) if the offender is a natural person—by a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—by a fine not exceeding \$2,000. 20

(3) Subject to sub-section (4), a person shall not conceal, remove, alter, deface or obliterate, or suffer any person under his control to conceal, remove, alter, deface or obliterate, any marking that is on a registered ship in accordance with the regulations. 25

(4) Sub-sections (2) and (3) do not apply in relation to anything done as authorized by the regulations or done for the purpose of escaping capture by an enemy. 30

Name of registered ship and change of name

27. (1) A person shall not describe a registered ship by any name other than the name by which the ship is for the time being registered.

(2) Subject to this Act, application may be made to the Registrar, in the manner prescribed, for a change in the name of a registered ship. 35

(3) If—

- (a) the name proposed for a ship in an application for the registration of the ship; or
- (b) the new name proposed for a registered ship in an application under sub-section (2), 40

is a prescribed name, or a name included in a prescribed class of names, the Registrar shall disallow the name.

(4) Where the Registrar grants an application under sub-section (2)—

- 5 (a) he shall cause the new name to be entered in the Register and endorsed on the ship's registration certificate; and
- (b) section 26 applies in relation to the marking of the new name on the ship as if the ship had been registered by that name.

Power of Minister to disallow name proposed for ship

10 28. The Minister may, by notice in writing given to the Registrar, disallow—

- (a) the name proposed for a ship in an application for the registration of the ship; or
- (b) the new name proposed for a registered ship in an application under sub-section 27 (2),

15 if the Minister is of the opinion that the description of the ship by that name is likely to prejudice the international relations of the Commonwealth.

Division 4—Nationality and National Colours

Certain ships to have Australian nationality

20 29. (1) The following ships shall, for all purposes, be taken to be Australian ships and to have Australian nationality:

- (a) registered ships;
- (b) unregistered ships (other than ships required to be registered), being—
 - 25 (i) Australian-owned ships referred to in section 13;
 - (ii) ships wholly owned by residents of Australia or by residents of Australia and Australian nationals; or
 - (iii) ships operated solely by residents of Australia or Australian nationals or both.

30 (2) Nothing in sub-section (1) shall be taken to alter the character of a ship as an article of personal property.

(3) In this section, “unregistered ship” means a ship that is not registered under this Act or under the law of a foreign country.

National colours and other flags

35 30. (1) It is hereby declared that the national colours for Australian ships are—

- (a) in the case of ships registered by virtue of section 12 or ships (other than ships referred to in section 13) registered by virtue of paragraph 14 (d)—the red ensign; and
- 40 (b) in any other case—the national flag and the red ensign.

- (2) When in waters outside Australian waters—
- (a) a ship to which paragraph (1) (a) applies may at any time, and shall as and when required by the regulations, fly the red ensign;
 - (b) a registered ship, other than a ship to which paragraph (1) (a) applies, may at any time, and shall as and when required by the regulations, fly the national flag or the red ensign; and 5
 - (c) a ship to which paragraph 29 (1) (b) applies may at any time fly the national flag or the red ensign.
- (3) Subject to sub-sections (4) and (5), when in Australian waters, a registered ship shall, as and when required by the regulations, fly the national flag or the red ensign. 10
- (4) If—
- (a) a ship is required by sub-section (3) to fly the national flag or the red ensign at a particular time (in this sub-section referred to as the “relevant time”); 15
 - (b) there was in force, immediately before the commencement of this Act, a warrant from Her Majesty or the Admiralty under section 73 of the Imperial Act known as the Merchant Shipping Act, 1894, as amended by any other Imperial Act, authorizing the use by the ship of the British Blue Ensign (with or without defacement); 20
 - (c) that section is in force at the relevant time as part of the law of the United Kingdom; and
 - (d) the flying of that Ensign by the ship at the relevant time is authorized by the warrant,
- it is sufficient compliance with sub-section (3) for the ship to fly that Ensign at the relevant time in lieu of the national flag or the red ensign. 25
- (5) If—
- (a) a ship is required by sub-section (3) to fly the national flag or the red ensign at a particular time; and
 - (b) the ship is, at that time— 30
 - (i) entitled to fly a particular flag by virtue of an authority under section 6 of the *Flags Act* 1953; or
 - (ii) entitled to fly a particular flag of a State or Territory,
- it is sufficient compliance with sub-section (3) for the ship to fly that particular flag at that time in lieu of the national flag or the red ensign. 35
- (6) A person shall not, in relation to a ship, use, or permit the use, at any one time, of 2 or more of the flags referred to in the preceding provisions of this section.
- (7) When an Australian ship is in waters outside Australian waters, a person shall not, in relation to that ship— 40
- (a) except as provided in sub-section (2), use, or permit the use of, a flag referred to in, or appointed under, the *Flags Act* 1953; or
 - (b) use, or permit the use of, a flag of a State or Territory or a flag to which a warrant referred to in sub-section (4) relates.

(8) A person shall not, in relation to a ship required to be registered that is not registered, use, or permit the use of, the national flag or the red ensign.

5 (9) Where, in relation to a ship, there is a contravention of, or failure to comply with, a provision of this section, the master and owner of the ship are each guilty of an offence.

10 (10) Upon application made in the manner prescribed by the owner or operator of a ship to which paragraph 29 (1) (b) applies, the Registrar shall grant to the applicant a certificate stating that the ship is entitled to fly the national flag and the red ensign in accordance with this section.

(11) A certificate granted under sub-section (10) is, for all purposes, *prima facie* evidence of the facts stated therein.

(12) In this section—

15 “Australian waters” means the territorial sea of Australia and any marine or tidal waters that are on the landward side of any part of that sea;

“flag” includes an ensign.

Declaration of ship’s nationality before clearance

20 31. (1) A Collector of Customs shall not grant a Certificate of Clearance in respect of a ship about to depart from an Australian port to a place outside Australia until the master of the ship has declared to the Collector the nationality of the ship.

(2) A declaration made under sub-section (1) shall be recorded on the Certificate of Clearance.

25 Improperly assuming Australian nationality

30 32. If, except for the purpose of escaping capture by an enemy, the master or owner of a ship that is not an Australian ship does anything, or permits anything to be done, for the purpose of causing the ship to appear to be an Australian ship, the ship is subject to forfeiture under this Act, and the master and owner are each guilty of an offence.

Concealing Australian nationality

35 33. If, except for the purpose of escaping capture by an enemy, the master or owner of an Australian ship does anything, or permits anything to be done, for the purpose of—

(a) concealing the nationality of the ship from any person entitled by a law of the Commonwealth or of a State or Territory to inquire into the nationality of the ship;

(b) deceiving any such person; or

40 (c) causing the ship to appear not to be an Australian ship, the ship is subject to forfeiture under this Act, and the master and owner are each guilty of an offence.

PART III—TRANSFERS, TRANSMISSIONS AND MORTGAGES**Interpretation**

34. In this Part, “ship” means a registered ship.

Application of Australian Shipping Commission Act

35. This Part has effect subject to section 48 of the *Australian Shipping Commission Act* 1956. 5

Transfer of ship, &c.

36. (1) Subject to section 37, a ship or a share in a ship shall be transferred by a bill of sale made in accordance with the regulations.

(2) Where a ship or a share in a ship is so transferred, the Registrar shall, as soon as practicable after the lodgment of the bill of sale together with a declaration of transfer made by the transferee under sub-section (3), register the bill of sale by entering in the Register the name of the transferee as owner of the ship or share and shall endorse on the bill of sale the fact of the entry having been made, together with the date and time of the making of the entry. 10
15

(3) A declaration of transfer for the purposes of sub-section (2) shall be made in accordance with the regulations and, where the transferee is not the Commonwealth or a State or Territory, shall include—

(a) in the case of the transfer of a ship, or a share in a ship, other than a small craft— 20

(i) a statement specifying the nationality of the transferee or, where the transferee is a body corporate, the country in which it was incorporated; and

(ii) a statement that, to the best of the knowledge and belief of the person making the declaration, the ship concerned will not cease to be an Australian-owned ship by reason only of the transfer; or 25

(b) in the case of the transfer of a ship, or a share in a ship, being a small craft— 30

(i) a statement specifying the nationality of the transferee or, where the transferee is a body corporate, the country in which it was incorporated;

(ii) a statement specifying the normal place of residence of the transferee or, where the transferee is a body corporate, the principal place of business of the body corporate; and 35

(iii) a statement that, to the best of the knowledge and belief of the person making the declaration, the ship concerned will not cease to be an Australian-owned ship or a ship referred to in paragraph 14 (b) or (c) by reason only of the transfer. 40

5 (4) Sub-section (3) applies in relation to ships on demise charter to Australian-based operators as if the statement required by sub-paragraph (3) (a) (ii) or (3) (b) (iii) were a statement that, to the best of the knowledge and belief of the person making the declaration, the ship concerned will not cease to be a ship on demise charter to an Australian-based operator by reason only of the transfer.

(5) Bills of sale lodged under this section shall be registered in the order of their lodgment.

Transmission of ship, &c., by operation of law

10 37. (1) Where a ship or a share in a ship is transmitted to a person by any lawful means other than by a transfer under section 36, the Registrar shall, as soon as practicable after the lodgment of a declaration of transmission made by that person under sub-section (2), together with
15 such evidence of the transmission as is prescribed, enter in the Register the name of that person as owner of the ship or share.

(2) A declaration of transmission for the purposes of sub-section (1) shall be made in accordance with the regulations and, where the person entitled under the transmission is not the Commonwealth or a State or Territory, shall include—

- 20 (a) in the case of the transmission of a ship, or a share in a ship, other than a small craft—
- (i) a statement specifying the nationality of the person entitled under the transmission or, where the person is a body corporate, the country in which it was incorporated; and
 - 25 (ii) a statement that, to the best of the knowledge and belief of the person making the declaration, the ship concerned will not cease to be an Australian-owned ship by reason only of the transmission; or
- 30 (b) in the case of the transmission of a ship, or a share in a ship, being a small craft—
- (i) a statement specifying the nationality of the person entitled under the transmission or, where the person is a body corporate, the country in which it was incorporated;
 - 35 (ii) a statement specifying the normal place of residence of the person entitled under the transmission or, where the person is a body corporate, the principal place of business of the body corporate; and
 - 40 (iii) a statement that, to the best of the knowledge and belief of the person making the declaration, the ship concerned will not cease to be an Australian-owned ship or a ship referred to in paragraph 14 (b) or (c) by reason only of the transmission.

(3) Sub-section (2) applies in relation to ships on demise charter to Australian-based operators as if the statement required by sub-paragraph (2) (a) (ii) or (2) (b) (iii) were a statement that, to the best of the knowledge and belief of the person making the declaration, the ship concerned will not cease to be a ship on demise charter to an Australian-based operator by reason only of the transmission. 5

Mortgage of ship, &c.

38. (1) A ship or a share in a ship may be made a security for the discharge of an obligation by way of a mortgage under this Act.

(2) The instrument of such a mortgage shall be made in accordance with the regulations. 10

(3) As soon as practicable after the lodgment of a mortgage instrument so made, the Registrar shall register the mortgage by entering particulars of the mortgage in the Register and shall endorse on the instrument the fact of the entry having been made, together with the date and time of the making of the entry. 15

(4) Mortgage instruments lodged under this section shall be registered in the order of their lodgment.

Priority of mortgages

39. Where 2 or more mortgages are registered in respect of the same ship or share in a ship, the priority among the mortgagees is in accordance with the order of registration of the mortgages, irrespective of the dates upon which they were made or executed and notwithstanding any express, implied or constructive notice. 20

Mortgage not to change ownership 25

40. A mortgage of a ship or of a share in a ship does not have the effect of the mortgagee becoming, or the mortgagor ceasing to be, owner of the ship or share except to the extent necessary to make the ship or share available as a security under the mortgage.

Mortgagee to have power of disposal 30

41. A mortgagee of a ship or of a share in a ship has power absolutely to dispose of the ship or share and to give effectual receipts in respect of the disposal, but where there are 2 or more mortgages of the same ship or share, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, dispose of the ship or share without the consent of every prior mortgagee. 35

Transfer of mortgage

42. (1) A mortgage of a ship or of a share in a ship may be transferred by an instrument of transfer made in accordance with the regulations.

(2) Where a mortgage is so transferred, the Registrar shall, as soon as practicable after the lodgment of the instrument, enter in the Register 40

the name of the transferee as the mortgagee of the ship or share the subject of the mortgage and endorse on the instrument the fact of the entry having been made, together with the date and time of the making of the entry.

5 **Transmission of mortgage by operation of law**

43. Where the interest of a mortgagee in a mortgage of a ship or of a share in a ship is transmitted to a person by any lawful means other than by a transfer under section 42, the Registrar shall, as soon as practicable after the lodgment of a declaration of transmission made by that person
10 in accordance with the regulations, together with such evidence of the transmission as is prescribed, enter in the Register the name of that person as mortgagee of the ship or share.

Discharge of mortgage

44. Where a mortgage is discharged, the Registrar shall, as soon as
15 practicable after the lodgment of the mortgage instrument, together with such evidence of the discharge of the mortgage as is prescribed, make an entry in the Register to the effect that the mortgage has been discharged and, on that entry being made, any interest of the mortgagee under the mortgage vests in the person in whom, having regard to any intervening
20 acts and circumstances, it would have been vested if the mortgage had not been made.

Powers of disposal by owner

45. The owner of a ship or of a share in a ship has power, subject to
25 this Act and to any rights and powers appearing in the Register to be vested in any other person, absolutely to dispose of the ship or share and to give effectual receipts in respect of the disposal.

Trusts not recognized

46. Notice of a trust, express, implied or constructive, shall not be entered in the Register or be receivable by the Registrar.

30 **Equities not excluded**

47. Subject to sections 41, 45 and 46, beneficial interests may be enforced by or against the owner or mortgagee of a ship or of a share in a ship in respect of his interest in the ship or share in the same manner as in respect of any other personal property.

35 **PART IV—ADMINISTRATION**

Registrar and Deputy Registrars of Ships

48. (1) There shall be a Registrar of Ships, who shall, under the
40 Permanent Head of the Department administered by the Minister, be responsible for the maintenance of the Register and have chief control of the Registration Office.

(2) There shall be such number of Deputy Registrars of Ships as the Minister determines, who shall, subject to the control of the Registrar, have all the powers and functions of the Registrar under this Act, other than his power of delegation under section 53.

Functions and powers of Registrar

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49. (1) In addition to the functions conferred by other provisions of this Act, the functions of the Registrar are to maintain the Register and, for that purpose—

- (a) to receive and record all information and documents required or permitted to be lodged with the Registrar under this Act;
- (b) to grant, issue, vary or revoke such certificates and other documents as are required or permitted to be granted or issued under this Act; and
- (c) to issue copies of, and extracts from, any such certificates and other documents and entries in the Register.

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(2) The Registrar has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of his functions including, but without limiting the generality of the foregoing, such powers for and in relation to requiring the furnishing of information and documents (including the delivery of certificates and other documents granted or issued under this Act) as are provided by the regulations.

20

Appointment of Registrar and Deputy Registrars

50. The Registrar and Deputy Registrars shall—

- (a) be appointed by the Minister; and
- (b) be officers of or employees in the Australian Public Service.

25

Acting Registrar and Deputy Registrars

51. (1) The Minister may appoint an officer of or employee in the Australian Public Service to act as Registrar, or as a Deputy Registrar—

- (a) during a vacancy in the office of Registrar or an office of Deputy Registrar, as the case may be, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Registrar or a Deputy Registrar, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

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and may at any time terminate such an appointment.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

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(3) Where a person is acting in an office in accordance with paragraph (1) (b), and the office becomes vacant while that person is so acting, then,

subject to sub-section (2), that person may continue so to act until the Minister otherwise directs or the vacancy is filled.

5 (4) While a person is acting as the Registrar or as a Deputy Registrar under this section, he has and may exercise all the powers, and shall perform all the functions and duties, of the Registrar or a Deputy Registrar, as the case may be, under this Act or any other law.

10 (5) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Delegation by Minister

15 52. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of or employee in the Australian Public Service any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

20 (3) A delegation under this section does not prevent the exercise of a power by the Minister.

Delegation by Registrar

25 53. (1) The Registrar may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of or employee in the Australian Public Service any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Registrar.

30 (3) A delegation under this section does not prevent the exercise of a power by the Registrar.

Registration Office

54. (1) For the purposes of this Act—

- 35 (a) there shall be an Australian Shipping Registration Office; and
(b) the Minister may, by notice published in the *Gazette*, establish branch offices of that Office.

(2) The Registration Office, and the branch offices established under paragraph (1) (b), shall be at such respective places in Australia as are determined by the Minister by notice published in the *Gazette*.

Seal of Registration Office and signature of Registrar

40 55. (1) There shall be a seal of the Australian Shipping Registration Office, in a form determined by the Minister, which shall be under the control of the Registrar.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Registration Office affixed to a document and shall presume that it was duly affixed.

(3) Where a signature on a document purports to be the signature of the Registrar or of a person empowered to sign the document by virtue of a delegation under section 53, it shall be presumed, until the contrary is proved, that the signature is that of a person who, at the relevant time, was holding, or performing the duties of, the office of Registrar or was so empowered to sign that document, as the case may be.

PART V—THE REGISTER OF SHIPS

Australian Register of Ships

56. (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 Minister directs, shall be kept at such places as the Minister directs.

Inspection of Register

57. A person may, on payment of the prescribed fee (if any), inspect the Register at any reasonable time during the hours when the Registration Office, or branch office, as the case may be, is open for business and, on payment of the prescribed fee, is entitled to be furnished with a copy of, or extract from, any entry in the Register.

Obsolete or incorrect entries in Register

58. (1) Where—

(a) in relation to a particular ship, no entry or amendment of an entry has been made in the Register for such period as is prescribed for the purposes of this section; and

(b) the Minister has reason to suspect that—

(i) any particulars entered in the Register in relation to the ship, other than particulars relating to a mortgage, are incorrect;

(ii) in relation to the ship, any notice, information or document in relation to which an entry in the Register is required by this Act to be made has not been lodged with the Registrar within the period referred to in paragraph (a); or

(iii) the ship has been lost (whether actually or constructively). taken by an enemy, burnt or broken up,

5 the Minister may, by notice in writing served on the registered agent or any owner of the ship, require him to furnish to the Minister, within a specified period (not being less than 30 days) after the date of service of the notice, such information and documents relating to the ship as are specified in the notice.

(2) If—

- (a) the person on whom a notice is served under sub-section (1) fails to furnish to the Minister, within the period specified in the notice, the information and documents specified in the notice; or
- 10 (b) upon the furnishing of any information and documents in pursuance of such a notice, the Minister is of the opinion that the circumstances justify his so doing,

15 the Minister may, by notice in writing, give the Registrar such directions as he thinks fit with respect to the closure of the registration relating to the ship or with respect to any entry or amendment of an entry to be made in the Register.

(3) The Registrar shall comply with a direction given under sub-section (2) and, where the Minister directs the closure of the registration relating to a ship—

- 20 (a) if the Minister states in the direction that he is of the opinion that the ship has been lost (whether actually or constructively), taken by an enemy, burnt or broken up—the Registrar shall make an entry in the Register of that statement, and the registration of the ship shall thereupon be deemed to be closed except so far as it
- 25 relates to any unsatisfied mortgage of the ship; or
- (b) in any other case—section 66 applies as if the ship had ceased to be entitled to be registered and the direction were a notice under sub-section 66 (1) stating that fact.

Rectification of Register

30 59. (1) If—

- (a) an entry is omitted from the Register;
- (b) an entry is made in the Register without sufficient cause;
- (c) an entry wrongly exists in the Register; or
- (d) there is an error or defect in an entry in the Register,

35 whether or not by reason of a decision of an officer (including a decision that the officer was empowered by this Act to make) a person aggrieved or the Registrar may apply to the Supreme Court of a State or Territory for rectification of the Register, and the Court may make such order as it thinks fit directing the rectification of the Register.

40 (2) Without limiting the generality of paragraph (1) (a), the reference in that paragraph to an entry omitted from the Register shall be read as

including a reference to a matter that is required or permitted by this Act to be entered, or to remain, in the Register, but is not entered in, or is removed from, the Register.

(3) A Court may, in proceedings under this section, decide any question that it is necessary or expedient to decide in connection with the rectification of the Register. 5

(4) Notice of an application under this section by a person aggrieved shall be served on the Registrar, who may appear and be heard, and shall appear if so directed by the Court.

(5) An office copy of an order under this section shall be served on the Registrar, and the Registrar shall, upon receipt of the order, rectify the Register accordingly. 10

Correction of clerical errors in Register

60. The Registrar may correct, or cause to be corrected, any clerical error or obvious mistake in the Register. 15

False entries in Register

61. A person shall not wilfully make or cause to be made a false entry in the Register.

PART VI—MISCELLANEOUS

Interpretation

62. In this Part—

“owner”, except in sections 64 and 74, means—

(a) in relation to an Australian-owned ship—the registered owner of the ship;

(b) in relation to a ship, other than an Australian-owned ship, registered by virtue of paragraph 14 (b)—the registered owner of the ship; or 25

(c) in relation to a ship, other than an Australian-owned ship, registered by virtue of paragraph 14 (c) or a ship registered by virtue of paragraph 14 (d)—the registered agent of the ship; 30

“unregistered ship” means a ship not registered under this Act or under the law of a foreign country.

Liabilities of ships not registered

63. (1) A ship required to be registered that is not registered—

(a) shall not be recognized as an Australian ship; and 35

(b) is not entitled to any benefits, privileges, advantages or protection usually enjoyed by a registered ship.

(2) For the purposes of any law of the Commonwealth or of a State or Territory providing for—

- (a) the payment of fees or other charges;
- (b) the liability to fines and forfeiture; or
- 5 (c) the punishment of offences committed on board a ship, or by any persons belonging to a ship,

a ship to which sub-section (1) applies shall be dealt with in the same manner in all respects as if the ship were registered.

Registered agent

10 **64. (1)** There shall be entered in the Register in respect of every registered ship the name and address of the person who is, for the time being—

- (a) in the case of a ship referred to in paragraph 14 (c)—the operator of the ship;
- 15 (b) in the case of a ship referred to in paragraph 14 (d)—the charterer of the ship;
- (c) in the case of a ship without a managing owner (other than a ship referred to in paragraph (a) or (b))—the ship’s agent or other person who has the management of the ship; or
- 20 (d) in any other case—the managing owner.

(2) Where a change occurs in the person, or the address of the person, referred to in sub-section (1) in relation to a registered ship—

- (a) in the case of a ship to which paragraph (1) (a) or (b) applies—the person whose name appears in the Register; or
- 25 (b) in any other case—the owner of the ship,

shall, unless a notice of the change has already been lodged under this sub-section, lodge with the Registrar, within 14 days after the change occurs, a notice of the change in the prescribed form.

Alterations to ships

30 **65. (1)** Where a registered ship is so altered as not to correspond with the particulars relating to the ship’s tonnage or description contained in the Register, the registered agent shall give notice of the alteration, in such manner, and within such time, as are prescribed—

- 35 (a) if the alteration is made at a foreign port at which there is a proper officer—to the proper officer at that port;
- (b) if the alteration is made outside Australia while the ship is at sea or at a foreign port at which there is no proper officer and, subsequently, but before arriving at an Australian port, the ship arrives at a foreign port at which there is a proper officer—to the proper officer at the first such port at which the ship so arrives;
- 40 or

(c) in any other case—to the Registrar,
and—

(d) where a notice of alteration is so given to a proper officer—the proper officer shall, subject to the regulations, grant a provisional registration certificate in respect of the ship in accordance with the prescribed form; or 5

(e) where a notice of alteration is so given to the Registrar—the Registrar shall, subject to Part II, enter the alteration in the Register in accordance with the regulations and grant a new registration certificate in respect of the ship. 10

(2) Subject to sub-section (4), a provisional registration certificate granted in respect of a ship under sub-section (1) has the same effect as a registration certificate until—

(a) the ship arrives in an Australian port; or

(b) the expiration of the period of 6 months commencing on the date on which the certificate was granted, 15

whichever first happens.

(3) Where a proper officer grants a provisional registration certificate under this section, he shall forward a copy of the certificate to the Registrar, together with a statement in accordance with the regulations setting out particulars relating to the grant of the certificate. 20

(4) If, while a provisional registration certificate granted in respect of a ship under sub-section (1) is in effect, application is made in the manner prescribed, the Registrar may, by notice in writing served on the applicant, extend, in relation to the certificate, the period referred to in paragraph (2) (b) and, in that event, the reference in that paragraph to a period of 6 months shall be read as a reference to that period as so extended. 25

(5) The person who has possession of a provisional registration certificate granted in respect of a ship under sub-section (1) shall, within 10 days after the ship first arrives at an Australian port after the grant, lodge the certificate with the Registrar. 30

(6) Upon lodgment of a provisional registration certificate under sub-section (5), the Registrar shall, subject to Part II, enter the alteration in the Register in accordance with the regulations and grant a new registration certificate in respect of the ship. 35

(7) Where a notice is not given in respect of a ship within a particular time as required by sub-section (1), the obligation to give notice as required by that sub-section continues, notwithstanding that that time has passed, until that notice is so given.

(8) Where a notice is not given in respect of a ship as required by this section, the owner of the ship is, in respect of each day during which the 40

notice is not so given (including the day of a conviction under this sub-section or any subsequent day) guilty of an offence punishable upon conviction—

- 5 (a) if the offender is a natural person—by a fine not exceeding \$500;
or
(b) if the offender is a body corporate—by a fine not exceeding \$1,000.

Ship lost, &c., or ceasing to be entitled to be registered

66. (1) In the event of a registered ship—

- 10 (a) being lost (whether actually or constructively), taken by an enemy, burnt or broken up; or
(b) ceasing to be entitled to be registered,

the owner of the ship shall, immediately after obtaining knowledge of the event, unless notice has already been given to the Registrar under this sub-section, give notice in writing of the event to the Registrar.

- 15 (2) Where the Registrar receives a notice under sub-section (1) relating to a ship, he shall make an entry in the Register of the event to which the notice relates.

(3) Where an entry has been made in the Register under sub-section (2) in respect of a ship—

- 20 (a) if the entry is in respect of a ship that has been lost (whether actually or constructively), taken by an enemy, burnt or broken up—the registration of the ship shall be deemed to be closed except so far as it relates to any unsatisfied mortgage of the ship; and
25 (b) if the entry is in respect of a ship that has ceased to be entitled to be registered—the registration of the ship shall, subject to this section, be deemed to be closed.

30 (4) Where a ship, in relation to which the Registrar has received a notice under sub-section (1) stating that the ship has ceased to be entitled to be registered, is subject to an unsatisfied mortgage or mortgages—

- (a) the registration of the ship, so far as it relates to the mortgage or mortgages, shall, subject to sub-sections (5) and (6), not be deemed to be closed; and
35 (b) the Registrar shall give notice in writing to the mortgagee, or each mortgagee, as the case may be, that he has received a notice under sub-section (1) stating that the ship has ceased to be entitled to be registered.

40 (5) Subject to this section, where the Registrar gives a notice under sub-section (4) to the mortgagee or mortgagees of a ship, the registration of the ship, so far as it relates to the mortgage or mortgages, shall be deemed to be closed at the expiration of a period of 60 days after the date of the notice.

(6) Where a mortgagee who has received a notice under sub-section (4) makes application to the Supreme Court of a State or Territory within the period of 60 days after the date of the notice or within such extended time as the Court, on application made either before or after the expiration of that period, allows, the Court may do all or any of the following, namely— 5

- (a) order that the ship and the ship's equipment be sold;
- (b) make such other orders for and in relation to the distribution of the proceeds of the sale as it thinks fit; and
- (c) make such orders and give such directions with respect to the closure of the registration of the ship as it thinks fit (including, in the case of an application for an extension of time, an order that the registration shall not be deemed to be closed for such period as the Court determines). 10

(7) Notice of an application made under sub-section (6) (including an application for an extension of time) shall be served on the Registrar. 15

(8) An order under sub-section (6) may be on such terms and conditions as to costs and otherwise as the Court thinks fit.

(9) The Registrar shall give effect to any orders and directions given by the Court under this section so far as they relate to the Register. 20

(10) Where the registration of a ship is closed or deemed to be closed under this section, the person having possession of the registration certificate or provisional registration certificate relating to the ship shall deliver the certificate to the Registrar or a proper officer in accordance with the regulations. 25

(11) Nothing in this section shall be taken to prejudice any rights of a mortgagee existing apart from this section.

Power to inquire into ownership of registered ship

67. (1) Where the Minister has reason to suspect that a registered ship is not entitled to be registered, he may, by notice in writing served on the registered agent of the ship, require him to furnish to the Minister, within a specified period (not being less than 30 days) after the date of service of the notice, evidence of the ownership of the ship. 30

(2) If the registered agent of a ship on whom a notice is served under sub-section (1) fails to furnish to the Minister, within the period specified in the notice, evidence to the satisfaction of the Minister that the ship is entitled to be registered, the Minister may, by notice in writing given to the Registrar, direct that the registration relating to the ship be closed and, upon receipt of such a notice by the Registrar, section 66 applies as if the ship had ceased to be entitled to be registered and the notice were a notice under sub-section 66 (1) stating that fact. 35 40

Unregistered ships entitled to be registered not to leave Australia

68. (1) An unregistered ship entitled to be registered shall not depart from an Australian port to a place outside Australia.

5 (2) The master and owner of a ship that departs from an Australian port in contravention of sub-section (1) are each guilty of an offence punishable upon conviction—

(a) if the offender is a natural person—by a fine not exceeding \$2,000;
or

(b) if the offender is a body corporate—by a fine not exceeding \$5,000.

10 (3) A Collector of Customs shall not grant a Certificate of Clearance in respect of an unregistered ship entitled to be registered that is about to depart from an Australian port to a place outside Australia.

(4) Sub-sections (1) and (3) do not apply to a prescribed ship, or ships included in a prescribed class of ships.

15 **Unregistered ships entitled to be registered not to leave foreign ports**

69. (1) Where an unregistered ship entitled to be registered is at a foreign port at which there is a proper officer, the ship shall not depart from that port on a voyage unless and until a registration certificate or provisional registration certificate is granted in respect of the ship.

20 (2) The master and owner of a ship that departs from a foreign port in contravention of sub-section (1) are each guilty of an offence punishable upon conviction—

(a) if the offender is a natural person—by a fine not exceeding \$2,000;
or

25 (b) if the offender is a body corporate—by a fine not exceeding \$5,000.

(3) Sub-section (1) does not apply to a prescribed ship, or ships included in a prescribed class of ships.

Proceedings on forfeiture

30 70. (1) Where a ship is subject to forfeiture under this Act, an officer may seize and detain the ship and the Minister may apply to the Supreme Court of a State or Territory for an order under sub-section (2).

(2) Upon application being made under sub-section (1) in relation to a ship, the Court may order the ship and its equipment to be forfeited to the Commonwealth.

35 (3) Anything forfeited under this section becomes the property of the Commonwealth and may be sold or otherwise dealt with as the Minister thinks fit.

(4) In this section, “officer” means—

40 (a) an officer or employee of the Commonwealth appointed by the Minister by writing signed by him to be an officer for the purposes of this section;

- (b) a member or special member of the Australian Federal Police or a member of the Police Force of a State or Territory; or
- (c) a member of an arm of the Defence Force.

Detention of ships

71. (1) Where it is provided by this Act that a ship may be detained, the ship may be detained by an officer as defined in section 70. 5

(2) Where a ship detained under this Act goes to sea before it is released from detention by a competent authority, the owner and master of the ship are each guilty of an offence.

(3) A Collector of Customs shall not grant a Certificate of Clearance in respect of a ship that is detained under this Act. 10

Taking officers to sea

72. If an officer is taken to sea in a ship without his consent, the master and owner are each guilty of an offence and, in addition to any penalty for that offence, are jointly and severally liable to pay all expenses incidental to the officer's return. 15

False statements, &c.

73. (1) A person who, by means of a statement that he knows to be false or misleading or by means of a document that to his knowledge contains information that is false or misleading, causes, or attempts to cause, an officer to do, or refrain from doing, any act or thing in the exercise of powers, or the performance of duties or functions, under this Act is guilty of an offence. 20

(2) A person shall not—

- (a) make to an officer a statement, whether orally or in writing; or 25
- (b) present to an officer a statement in writing,

knowing it to be false or misleading in a material particular.

Penalty—

- (a) if the offender is a natural person—\$1,000 or imprisonment for 6 months, or both; or 30
- (b) if the offender is a body corporate—\$2,000.

(3) For the purposes of the application of this section in relation to a corporation, but without prejudice to the liability of any person other than the corporation—

- (a) a statement made, or presented or otherwise used, by a person acting on behalf of the corporation shall be deemed to have been made, presented or otherwise used by the corporation; and 35
- (b) the knowledge of any person employed by, or concerned in the management of, the corporation shall be deemed to be knowledge of the corporation. 40

Offences—general

74. (1) A person who contravenes or fails to comply with sub-section 20 (1) or (2), 21 (6), 22 (5), 24 (1), 26 (3), 27 (1), section 61 or sub-section 64 (2), 65 (5) or 66 (1) or (10) is guilty of an offence.

5 (2) Where the owner of a ship is guilty of an offence against sub-section 26 (2), 30 (9), section 33, sub-section 65 (8) or 66 (1) or section 72, the person who is the registered agent of the ship by virtue of paragraph 64 (1) (a), (b) or (c) shall be deemed to be also guilty of that offence and is punishable accordingly.

10 (3) Except where a provision of this Act otherwise provides, the punishment for an offence against this Act is—

(a) if the offender is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or

15 (b) if the offender is a body corporate—a fine not exceeding \$5,000.

(4) An offence against sub-section 12 (3), section 25, section 32 or 33 or sub-section 73 (1) is an indictable offence and, subject to sub-section 75 (3), is punishable on conviction—

20 (a) in the case of an offence against sub-section 12 (3)—
 (i) if the offender is a natural person—by a fine not exceeding \$5,000; or
 (ii) if the offender is a body corporate—by a fine not exceeding \$10,000; or

25 (b) in any other case—
 (i) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
 (ii) if the offender is a body corporate—by a fine not exceeding \$20,000.

30 (5) Where a corporation is guilty of an offence against this Act, a director, manager, secretary or other officer of the corporation who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the offence, shall be deemed to be also guilty of that offence and is punishable accordingly.

35 Prosecution of offences

75. (1) An offence against this Act, other than an offence referred to in sub-section 74 (4), shall be prosecuted summarily.

40 (2) Notwithstanding that an offence referred to in sub-section 74 (4) is expressed to be an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an indictable offence, the penalty that the court may impose is—

(a) if the offender is a natural person—

(i) in the case of an offence against sub-section 12 (3)—a fine not exceeding \$2,000; or

(ii) in any other case—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or

(b) if the offender is a body corporate—a fine not exceeding \$5,000.

Joinder of charges and penalties for certain offences

76. (1) Charges against the same person for any number of offences against sub-section 26 (2) or 65 (8) may be joined in the same information or complaint if those offences relate to a failure to do the same act or thing.

(2) If a person is convicted of 2 or more offences referred to in sub-section (1), being offences related to a failure to do the same act or thing, the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

Admissibility of documents in evidence

77. (1) A document declared by this Act (including sub-section (4)) to be admissible in evidence is, on mere production, admissible in evidence in any proceedings as *prima facie* evidence of any matter stated in the document in pursuance of this Act or in pursuance of any duty under this Act and of the fact that it was signed by the person by whom it purports to be signed.

(2) The Registrar or a Deputy Registrar may, subject to this Act, supply copies of, or extracts from, any entry in the Register or any document forming part of or associated with the Register, and certify them by writing signed by him and sealed with the seal of the Registration Office.

(3) The person to whose custody a document referred to in sub-section (1) (other than a copy or extract referred to in sub-section (2)) is entrusted shall, upon payment of the prescribed fee, supply a copy of, or extract from, the document, certified by writing signed by him, to any person applying for such a copy or extract.

(4) A document purporting to be a copy or extract supplied under sub-section (2) or (3) is admissible in evidence.

Review of certain decisions

78. (1) In sub-section (2), “decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

(2) Applications may be made to the Administrative Appeals Tribunal for review of—

(a) a decision of the Minister under sub-section 23 (1);

- (b) a decision of the Registrar under sub-section 10 (2), 21 (5), 22 (4), 22 (6), 27 (3), 65 (4) or 88 (3) or section 89;
- (c) a determination made by the Registrar in the manner provided by sub-section 87 (1), or a refusal to make such a determination;
or
- (d) a decision of a proper officer under sub-section 22 (1).

Preservation of State and Territory legislation

79. This Act is not intended to exclude or limit the operation of any law of a State or Territory providing for the recording or registration of ships where the recording or registration is for a purpose other than the establishment of title, the transfer of title, the registration of a mortgage, the transfer of a mortgage or the grant of nationality in relation to a ship.

References in other laws

80. In any law of the Commonwealth or of a State or Territory (other than a law declared by the regulations to be a law to which this section does not apply) or any instrument (including rules, regulations or by-laws) having effect under such a law, except so far as the context otherwise requires—

- (a) a reference, however expressed, to a ship registered in Australia shall be read as a reference to a registered ship;
- (b) a reference, however expressed, to the certificate of registry of a ship shall be read as a reference to the registration certificate, or provisional registration certificate, as the case may be, of the ship; and
- (c) a reference, however expressed, to the port of registry of a ship registered in Australia shall be read as a reference to the home port of a registered ship selected or changed in accordance with the regulations.

Jurisdiction of Territory Supreme Courts

81. Jurisdiction is conferred, to the extent that the Constitution permits, on the Supreme Court of each Territory to hear and determine applications made to that Court under sections 59, 66 and 70.

Appeals

82. (1) An appeal lies to the Federal Court of Australia from a judgment or order of the Supreme Court of a State or Territory exercising jurisdiction under section 59, 66 or 70.

(2) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (1).

(3) Except as provided in sub-sections (1) and (2), no appeal lies from a judgment or order referred to in sub-section (1).

Regulations

83. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act. 5

(2) Without limiting the generality of sub-section (1), the regulations may make provision for and in relation to—

- (a) the manner in which, and the time within which, applications under this Act are to be made;
- (b) the documents and information to be furnished by applicants in connection with, or in support of, applications under this Act; 10
- (c) the keeping of the Register and copies of the Register, or a part or parts of the Register;
- (d) the entries to be made in the Register;
- (e) the manner in which, and the time within which, documents and information are to be lodged, including provision empowering the Registrar— 15
 - (i) to direct a person who has lodged, or is seeking to lodge, any document or information to do such things as are necessary to ensure that it is in accordance with the requirements of this Act; and 20
 - (ii) to treat any document or information as not having been lodged until it is in accordance with the requirements of this Act;
- (f) the registration (whether by way of entry in the Register or otherwise) of documents and information; 25
- (g) the re-registration of ships entitled to be registered, the registration of which under this Act, or under the previous law, has been closed;
- (h) the registration of Government ships; 3
- (j) the closure of the registration of ships;
- (k) the qualifications required of, and other requirements relating to, registered agents;
- (l) the verification, by statutory declaration, of information and documents required for the purposes of this Act; 3
- (m) the retention or return by the Registrar of documents lodged in accordance with this Act;
- (n) the selection and change of home ports for registered ships;
- (o) the matters to be recorded or endorsed on registration certificates, provisional registration certificates and temporary passes; 4
- (p) the marking of ships for the purposes of section 26;
- (q) the making of any declaration or the doing of any thing required or permitted by this Act to be made or done in the name and on

behalf of a person incapable of making such a declaration or doing any such thing by reason of infancy, lunacy or other disability;

- 5 (r) the manner in which instruments, notices and other documents under this Act may be given to, or served on, persons;
- (s) the payment of fees and expenses to persons required under this Act to attend and give evidence or make declarations before the Registrar or other persons;
- 10 (t) the imposition and recovery of fees in respect of—
- (i) the making of applications under this Act;
 - (ii) the lodging and registration of documents or information;
 - (iii) the registration and re-registration of ships;
 - (iv) the issue of registration certificates, provisional registration certificates and temporary passes; and
 - 15 (v) the supplying of copies of, or extracts from, entries in the Register or documents forming part of, or associated with, the Register;
- (u) the conduct of any business relating to the Registration Office;
- 20 (v) the declaration of specified documents, or of documents included in specified classes of documents, to be admissible in evidence for the purposes of section 77;
- (w) the form of any instrument, notice or other document permitted or required to be issued, furnished, lodged or registered for the purposes of this Act; and
- 25 (x) any matter incidental to or connected with any of the foregoing.

(3) The regulations may provide that a specified provision of this Act does not apply, or applies with specified modifications, in relation to Government ships.

30 (4) The power conferred by sub-section (3) to make modifications by regulation includes the power to omit any matter or add any new matter.

(5) The regulations may provide, in respect of an offence against the regulations, for the imposition of a fine not exceeding \$500.

35 (6) The power to make regulations conferred by this Act shall not be taken, by implication, not to include the power to make provision for or in relation to a matter by reason only of the fact that—

- (a) provision is made by this Act in relation to that matter or another matter; or
- (b) power is expressly conferred by this Act to make provision by regulation for or in relation to another matter.

40 (7) The power to make regulations conferred by this Act may be exercised—

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and

- (b) so as to make, with respect to the cases in relation to which it is exercised, the same provision for all those cases or a different provision for different cases or classes of case.

PART VII—TRANSITIONAL PROVISIONS

Interpretation

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84. In this Part, unless the contrary intention appears, “commencing date” means the date fixed under section 2.

Additional operation of Part

85. Without prejudice to its effect apart from this section, this Part also has, by force of this section, the effect it would have if a reference in section 86 to a ship entitled to be registered were a reference to a ship other than a ship entitled to be registered.

10

Ships registered in Australia under previous law deemed registered under this Act

86. (1) Every ship entitled to be registered that was, immediately before the commencing date, registered in accordance with the previous law at a port in Australia shall be deemed, on and from that date, to be registered under this Act.

15

(2) Any entry or record that, immediately before the commencing date, appeared in a register book kept at a port in Australia under the previous law in relation to a ship referred to in sub-section (1) shall be deemed to be an entry or record in the Register in relation to that ship and to have been made on the date on which, and at the time when, it was made under the previous law.

20

Transfer of registration from foreign ports of ships entitled to be registered

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87. (1) Subject to sub-section (3), where a ship entitled to be registered was, immediately before the commencing date, registered in a foreign country, or at a port in a foreign country, under provisions of a law of that country corresponding with provisions of the previous law, or under provisions determined by the Registrar to be provisions that so correspond to an extent sufficient for the purposes of this section, the ship—

30

(a) in the case of a ship permitted to be registered—may; or

(b) in the case of a ship required to be registered—shall,

within 6 months after the commencing date, be registered under this Act by way of a transfer of the registration to the Register.

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(2) An application for the registration of a ship under this section shall be made in accordance with the regulations.

(3) A ship shall not be registered under this section unless the person responsible for the maintenance of the foreign register concerned—

(a) transmits to the Registrar—

40

(i) all the particulars entered in the foreign register in relation to the ship;

(ii) the names of all the persons appearing in the foreign register to be interested in the ship, either as owners or mortgagees; and

5 (iii) any instrument or other document relating to the ship, or a certified copy of such an instrument or document, made in accordance with a provision of the law of that foreign country corresponding with a provision of the previous law, being an instrument or document kept by the first-mentioned person; and

10 (b) consents to the closing of the registration of the ship in that register.

(4) Until the expiration of 6 months after the commencing date, sub-sections 12 (3) and (4) do not apply in relation to a ship to which sub-section (1) applies, being a ship required to be registered, or in relation to the owner of such a ship.

15 (5) In this section, "foreign register" means the register book or books, or other similar documents or collections of documents, kept in accordance with provisions of a law of a foreign country relating to the registration of ships corresponding with the provisions of the previous law relating to the keeping of register books under the previous law.

Instruments, &c., made under previous law or corresponding foreign law continue in force

88. (1) Subject to sub-sections (3) and (4)—

25 (a) any instrument or other document made in accordance with a provision of the previous law and in effect immediately before the commencing date; and

(b) any endorsement, memorandum or other note made in accordance with a provision of the previous law on any such instrument or document and in effect immediately before the commencing date, 30 has effect on and after that date as if it had been made in accordance with the corresponding provision of this Act.

(2) Subject to sub-sections (3) and (4)—

(a) any instrument or other document— 35 (i) made in accordance with a provision of the law of a foreign country relating to the registration of ships in that country, being a provision that corresponds with a provision of the previous law;

(ii) made in respect of a ship application for the registration of which is made under section 14 or 87; and

40 (iii) in effect immediately before the commencing date; and

(b) any endorsement, memorandum or other note made, in accordance with a provision of the law of that foreign country that corresponds with a provision of the previous law, on any such instrument or document and in effect immediately before the commencing date, 45

has effect on and after that date as if it had been made in accordance with the corresponding provision of this Act.

(3) Where any instrument or other document referred to in sub-section (1) or (2) is lodged with, or received by, the Registrar for the purposes of this Act and the Registrar is of the opinion that—

- (a) the instrument or document does not sufficiently comply with the requirements of this Act; or
- (b) it would be inappropriate to accept the instrument or document for the purposes of this Act,

he may refuse to accept the instrument or document for the purposes of this Act.

(4) Sub-sections (1) and (2) do not apply to a certificate of mortgage or certificate of sale granted under section 39 of the previous law or under a corresponding provision of the law of a foreign country.

Applications under previous law

89. Notwithstanding anything to the contrary in this Act, where—

- (a) before the commencing date, an application was made under the previous law, but not finally dealt with; and
- (b) the Registrar is satisfied that the requirements of this Act relating to an application of the same kind are substantially similar to the requirements of the previous law,

the Registrar shall treat that application as if it had been made under this Act.

Certificates of registry may be recalled

90. For the purpose of the issue of a registration certificate under this Act in respect of a ship deemed to be registered by virtue of section 86, the Registrar may recall the certificate of registry issued under the previous law in respect of the ship.

Registers kept under previous law in Australia incorporated with Register

91. Each register book kept by a registrar of British ships at a port in Australia under the previous law shall be deemed to be part of the Register to be kept in pursuance of this Act, and any documents retained by such a registrar that are associated with the register book kept by him shall be retained by the Registrar and kept at the Registration Office.

Verification of particulars in registers kept under previous law, &c.

92. (1) The Registrar may, by notice in writing served on the registered agent of a ship deemed to be registered by virtue of section 86, require him—

- (a) to verify, in such manner as is specified in the notice, any matter or particular appearing in the Register by virtue of section 91; or
- (b) to furnish such information and documents relating to the ship and its owner as are specified in the notice, being information

and documents of the kind required in connection with, or in support of, an application for registration, or to do both, within a specified period (not being less than 30 days) after the date of the notice.

5 (2) If the registered agent of a ship on whom a notice is served under sub-section (1) fails to verify a matter or particular, or to furnish any information or documents, in accordance with the notice, and the Minister is not satisfied that the ship is entitled to be registered, the Minister may, by notice in writing given to the Registrar, direct that the registration relating to the ship be closed and, upon receipt of such a notice by the Registrar, section 66 applies as if the ship had ceased to be entitled to be registered and the notice were a notice under sub-section 66 (1) stating that fact.

15 **Ships deemed to be registered to cease to be registered if not entitled to be registered**

93. (1) At any time after the expiration of the period of 6 months commencing on the commencing date, the Registrar shall, if he has reason to suspect that a ship deemed to be registered on the commencing date was not, on that date, entitled to be registered, serve notice of that fact on the owner and mortgagee or mortgagees (if any) of the ship, drawing attention to the provisions of this section.

20 (2) If, within a period of 3 months commencing on the last day on which the notice was served, evidence to the satisfaction of the Registrar that the ship is entitled to be registered is not produced, the Registrar shall, on the expiration of that period, cause the registration of that ship to be closed.

(3) In this section—

“last day on which the notice was served” means—

- 0 (a) where notice is to be served on only one person—the day on which notice is served on that person; or
- (b) where notice is to be served on 2 or more persons—
 - 5 (i) if notice is served on those persons on the same day—that day; or
 - (ii) if notice is served on those persons on different days—the later or latest of the days on which notice is so served;

“mortgagee” includes a mortgagee deemed to be registered by virtue of this Part.

Registrar may defer registration, &c.

94. (1) Notwithstanding anything to the contrary contained in this Act, during the period of 14 days commencing on the commencing date, the Registrar may defer until the expiration of that period—

- (a) the doing of any thing relating to documents lodged, or produced for lodgment;

- (b) the making of any record or entry in the Register;
- (c) the registration of any ship or of any matter; or
- (d) the doing of any thing incidental to the registration of a ship or of any matter.

(2) Documents produced for lodgment, or lodged, during the period referred to in sub-section (1), in relation to which the Registrar has deferred the making of a record or entry in the Register, or the doing of any other thing, shall, after the expiration of that period, be dealt with in the order in which they were received by the Registrar.

(3) Where, in relation to a ship, any document has been produced for lodgment, or lodged, during the period referred to in sub-section (1), and the Registrar has deferred the making of a record or entry in the Register, or the doing of any other thing, relating to the document during that period, then, for the purpose of making a record or entry in the Register, or doing any other thing, relating to the document after the expiration of that period—

- (a) in the case of a document produced for lodgment, if the Registrar considers that the document is in a form satisfactory for lodgment—the document shall be deemed to have been lodged on the date on which, and at the time when, it was so produced; and
- (b) in the case of a document lodged—the record or entry made in the Register, or the thing done, relating to the document shall be deemed to have been made or done on the date on which, and at the time when, it was lodged.

Regulations for transitional purposes

95. (1) The regulations may make provision for and in relation to any matter arising from, consequential upon or otherwise connected with the operation of this Part.

(2) The power to make regulations under sub-section (1) extends to the making of regulations expressed to take effect on and from a date earlier than the date of the making of the regulations, not being a date earlier than the commencing date.