Date Introduced: 22 May 1980
House: House of Representatives
Presented by: Hon. R.J. Hunt, M.P., Minister for Transport

Purpose

To repeal the Merchant Shipping Act 1894 (U.K.) insofar as it is part of the law of Australia, and to establish an Australian system of shipping registration.

Background

The registration of Australian ships is still governed by the Merchant Shipping Act 1894 (U.K.). Originally this Act applied throughout the British Empire, on the basis that a ship was a British ship if it was owned by a British subject or corporation anywhere in the Empire.

Under the Statute of Westminster 1931 the various Commonwealth countries were free to repeal the Merchant Shipping Act 1894 and establish their own shipping registers. An Agreement negotiated at the same time, however, the British Commonwealth Merchant Shipping Agreement 1931, provided that the laws of each country would adopt a common status of "British ship" and closely follow the 1894 Act. The 1931 Agreement was rescinded by all member countries by mutual agreement in 1978.

Australia is the only major independent member of the Commonwealth (other than Britain) to continue to operate under the Merchant Shipping Act system. The Commonwealth countries have recently agreed on common principles for the future registration of their own shipping registers. Britain is expected to legislate to confine the Merchant Shipping Act system to Britain and to ships owned 50% by residents of Britain.

Main Provisions

Part I, Preliminary (Clauses 1-11)

The proposed Act will commence on proclamation (clause 1).
The previous law is repealed (clause 4).

Clause 8 defines Australian owned ship as one that is wholly owned by Australian nationals, or generally where the majority of the owners of a ship are Australian.

Part II, Registration of Ships (Clauses 12-33)

Clause 12 is a key clause. It provides that every Australian owned ship, other than those exempt under Clause 13, shall be registered. The exemptions are Government ships (including Defence Force ships), fishing vessels, pleasure craft and small craft (clause 13).

Australian owned ships for which registration is not compulsory may be registered on a voluntary basis (clause 14).

Clauses 19-25 relate to the grant and custody of Registration Certificates, the issue of new and provisional certificates and temporary passes.

Clause 26 provides that registered ships shall be marked in accordance with the regulations. Clauses 27-28 deal with naming of ships.

Clause 29 is another other key clause in the Bill. It provides that the following ships shall be Australian ships and have Australian nationality -

(a) registered ships;
(b) unregistered Australian owned ships referred to in Clause 13;
(c) unregistered ships (other than those required to be registered) wholly owned or operated by residents of Australia.

Clause 30 declares that the national flag is the proper national colours for all registered ships. A registered ship shall fly the national flag at all times (except for a period of grace of 2 years during which certain yachts may fly the Blue Ensign, see clause 95).

It is an offence for a person to use the national flag on board a ship or assume Australian nationality in relation to a ship, if the ship is not an Australian ship (clause 32). It is also an offence to conceal the nationality of an Australian ship or cause it to appear not to be an Australian ship (clause 33).
Part III Transfers, Transmissions and Mortgages (Clauses 34-37)

Subject to clause 37, an Australian ship shall be transferred by a bill of sale and the transfer registered (clause 36). A ship may be lawfully transferred other than by a bill of sale but the transfer shall be registered (clause 37). An Australian ship may be mortgaged but the mortgage shall be registered (clauses 38-47).

Part IV, Administration (Clauses 48-56)

A Registrar of Ships is established, under the Permanent Head of the Department administered by the Minister. Deputy Registrars are also provided for (clause 48). The function of the Registrar is to maintain the Register and issue all certificates under the Act (clause 49). The Registrar and Deputy Registrars shall be appointed by the Minister and be members of the Australian Public Service (clause 50). The Minister and the Registrar may delegate their powers (clauses 52-53).

There shall be an Australian Shipping Registration Office and branch offices (clause 54). The office shall have a seal (clause 55).

Part V, The Register of Ships (Clauses 57-61)

There shall be an Australian Register of Ships, open to the public (clause 57). Obsolete or incorrect entries in the Register may be corrected and aggrieved parties may apply to a Court for rectification of the Register (clauses 58-59).

Part VI, Miscellaneous (Clauses 62-83)

A ship required to be registered that is not registered shall have none of the benefits or protection of a registered ship but is still liable to fees, fines, forfeiture and punishment for offences committed by persons on board (clause 63).

The operator, charterer, agent or managing owner of a ship shall be registered (clause 64). Alterations to ships shall be registered (clause 65). Ships lost or ceasing to be entitled to be registered shall be notified to the Registrar (clause 66). The Minister may investigate the ownership of a registered ship (clause 67). An unregistered ship which is entitled to be registered shall not depart from an Australian port to a place outside Australia, nor shall such a ship leave a foreign port (clauses 68-69).
It is an offence to make a false statement in relation to the Act (clause 73). A person dissatisfied by a decision under the Act by the Minister or the Registrar may request them to reconsider the decision. If still dissatisfied an application for review of the decision may be made to the Administrative Appeals Tribunal (clause 78). The Governor-General may make regulations under the Act (clause 83).


Ships registered in Australia under the previous law are deemed to be registered under the Act, and matters already entered in any register are deemed to be entered in the Register under the Act (clause 86). Any orders or papers issued under the previous law are deemed to continue in force under the Act (clauses 88-89).

Ships entitled by warrant to use the British Blue Ensign (about 400 yachts in 16 yacht clubs) may continue to use that flag in Australian waters for 2 years after the commencement of the Act (clause 95).

6 August 1980

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