

1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Shipping Registration Bill 1981

Flags Amendment Bill 1981

Navigation Amendment Bill 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport the
Hon. Ralph J. Hunt)

OUTLINE

Shipping Registration Bill 1981

The main purpose of the Bill is to fix the conditions for registration of ships in Australia and to grant ships Australian nationality. It also provides for Australian ships to fly the Australian National Flag or the Australian Red Ensign in accordance with Australia's obligations under the Geneva Convention on the High Seas 1958, to which Australia is a party.

Australia has no law under which Australian nationality can be granted to ships. Ships are at present registered in Australia under Part I of the United Kingdom Merchant Shipping Act 1894 as 'British ships', rather than as 'Australian ships' by officers of the Department of Business and Consumer Affairs acting as 'Registrars of British Ships'. The Shipping Registration Bill will repeal Part I of this 1894 U.K. Act in its application to Australia.

The Bill provides for the registration of ships more than 50% Australian owned, which are capable of navigating the high seas. Foreign owned ships on bareboat charter to Australian based operators and ships of less than 12 metres in length wholly owned or operated by Australian residents or nationals will also be eligible for Australian registration. Registration will only be obligatory in the case of commercial ships 12 metres or more in length.

The Bill will declare the Australian Red Ensign the national colours for commercial ships, and the Australian National Flag and the Australian Red Ensign the national colours for all other Australian ships including unregistered ships. There is also provision for the continued use of certain other flags in Australian waters.

The proposed flag provisions require consequential amendment of the Flags Act 1953 and the Navigation Act 1912.

Flag Amendment Bill 1981

This is a small consequential Bill arising out of the Shipping Registration Bill 1981 and the Navigation Amendment Bill 1981 and its purpose is to amend the description of the Australian National Flag and the Australian Red Ensign. In the process the reference to the 'British Blue Ensign' as part of the description of the Australian National Flag is removed.

Under the Shipping Registration Bill 1981, the Australian National Flag and the Australian Red Ensign will be the proper national colours for Australian ships. This Bill will apply to all non-naval ships, including unregistered ships. Merchant ships will fly the Australian Red Ensign and other ships will have the option of flying either the Australian National Flag or the Australian Red Ensign.

Navigation Amendment Bill 1981

The main purpose of this Bill are to amend the Navigation Act in consequence of the Shipping Registration Bill 1981, to effect a complete revision of the offences and penalties provisions of the Act and to amend the definition of 'ship'.

Provisions of the Principal Act that are expressed to apply to British ships are being removed and more appropriate references to ships registered in Australia under the proposed Shipping Registration Act or to ships otherwise connected with Australia are being inserted.

A key provision in this regard is clause 8, which inserts a new section 10 into the Principal Act to re-define the scope of Part II of the Act. Most of the other amendments, except those referred to below are in consequence of that amendment.

Provisions not connected with the section 10 amendment but otherwise related to the Shipping Registration Bill make adjustments to the coasting-trade provisions, repeal section 406 concerning ships' flags and amend tonnage measurement provisions.

The provisions effecting comprehensive offences and penalties amendments were arrived at as the result of detailed consultation between the Attorney-General's Department and the Department of Transport.

The amendment to the definition of 'ship' is to ensure that non-self propelled offshore industry vessels are not 'ships' for general Navigation Act purposes although being 'ships' for Shipping Registration Act purposes.

There are also minor drafting corrections and a new power of exemption is being inserted to deal with the odd cases where a ship comes under Commonwealth jurisdiction for brief periods - for example, because of a single inter-State voyage.

SHIPPING REGISTRATION BILL 1981

CLAUSE 1

SHORT TITLE

This is the normal formal clause providing for the citation of an Act.

CLAUSE 2

COMMENCEMENT

This provides for the Act to come into operation on a date to be fixed by Proclamation.

CLAUSE 3

INTERPRETATION

This clause contains numerous definitions which are required for the purposes of the Bill.

Definitions in sub-clause (1) of a particular importance for Australian registration requirements and eligibility are those of 'Australian national', ' demise charter', 'Government authority' and 'ship'.

CLAUSE 3 (cont'd)

'Australian national' is defined as an (a) Australian citizen, (b) a body corporate established by or under a law of the Commonwealth or of a State or Territory (without reference to ownership of a company), or (c) the Commonwealth, a State or a Territory.

'Demise charter' refers to arrangement under which a charterer has the whole possession and control of the ship, including the right to appoint the master and crew. The Bill provides that vessels on 'demise charter' to an Australian-based operator would be eligible for Australian registration.

'Government authority' includes the Commonwealth, a State or Territory and a body corporate established for a public purpose under Commonwealth, State or Territory law, but excludes the Australian Shipping Commission, the Western Australian Coastal Shipping Commission and similar bodies prescribed by regulations. Ships owned by or on demise charter to Government authorities are 'Government ships' and as such are exempt from compulsory registration requirements.

'Ship' is defined to include any kind of vessel capable of navigating the high seas, including marine craft such as off-shore industry mobile units and air cushion vehicles operating in a marine environment. There is provision for the regulations to prescribe vessels or structures which would be excluded from the definition of 'ship'.

Sub-clause (3) defines a 'resident of Australia'. Ships under 12 metres are eligible for registration if owned or operated by Australian residents as well as nationals.

CLAUSE 4

REPEAL

This clause repeals Part 1 of the United Kingdom Merchant Shipping Act 1894 in so far as that Act applies as part of the law of Australia. The present registration system in Australia, which operates under that Act, is therefore abolished. However, the transitional provisions provide for a smooth change-over to the Australian system.

CLAUSE 5

ACT TO BIND THE CROWN

This clause provides that the Act will bind the Crown in right of the Commonwealth, the States and the Northern Territory.

CLAUSE 6

APPLICATION OF ACT

This clause extends the legislation to every external Territory of Australia and to acts, omissions, matters and things outside Australia.

CLAUSE 7

ACT NOT TO APPLY TO DEFENCE FORCE SHIPS

The legislation does not apply in relation to a ship belonging to an arm of the Australian or foreign defence forces.

CLAUSE 8

AUSTRALIAN-OWNED SHIPS

Sub-clause (1) defines an 'Australian-owned ship' as one where the ship is owned

- solely by an Australian national or nationals
- by joint owners the majority of whom are Australian nationals. Joint owners are those in whom the property in a ship is vested jointly, with unity of title and no distinction of interest
- by owners in common where more than 32 of the 64 shares in a ship are owned by an Australian national or nationals. Owners in common are those in whom distinct shares in the ship are vested in severalty but with an undivided interest in the whole.

Sub-clause (2) outlines the approach for calculating Australian ownership where the ship is owned by 2 or more persons as owners in common and where 2 or more persons are joint owners

CLAUSE 8 (contd)

of a share or shares in a ship. The interest of each joint owner is to be ascertained by dividing the number of jointly owned shares by the number of joint owners. The interests of Australian nationals so ascertained are added together.

CLAUSE 9

SHIPS ON DEMISE CHARTER TO AUSTRALIAN BASED OPERATORS

This clause defines 'an Australian-based operator' for the purposes of eligibility for registration of ships on demise charter and ensures that Australian nationals have more than a 50 per cent interest in the charter.

CLAUSE 10

DETERMINATION OF LENGTH OF SHIP

Sub-clause (1) describes the means of determining the overall length of a ship for the purposes of the legislation.

Sub-clause (2) provides for the Registrar to determine the means of ascertaining the length of a ship where he considers it impracticable because of the construction of the ship to use the means outlined in sub-clause (1). A decision by the Registrar under this sub-clause is reviewable upon application by the Administrative Appeals Tribunal.

CLAUSE 10 (cont'd)

The length of the ship is relevant in determining whether it is subject to compulsory registration (i.e. if 12 metres or more) or is able to be registered by an Australian resident (i.e. if under 12 metres). Length is also used as a basis for application of various marine requirements.

CLAUSE 11

REGISTRATION OF PROPERTY IN SHIPS

This clause provides that

- the property in the ship is to be divided into 64 shares
- the number of persons registered as owners of the ship is not to exceed 64, subject to provisions that
 - : up to 5 persons may be registered as joint owners of one or more shares in the ship
 - : joint owners of shares would be treated as being one person
 - : a ship or a share could be transmitted to a person by operation of law or by any lawful means other than by transfer by bill of sale

CLAUSE 11 (contd)

- a joint owner of a ship or share or shares in a ship is not entitled to dispose of his interest in severalty
- a person is not to be registered as the owner of a fractional part of a share
- a body corporate may be registered as owner by its corporate name.

This clause follows the approach of Section 5 of the United Kingdom Merchant Shipping Act 1894.

CLAUSE 12

OBLIGATION TO REGISTER AUSTRALIAN-OWNED SHIPS

Sub-clause (1) provides that 'Australian-owned' ships, that is those more than 50 per cent Australian owned, are required to be registered unless exempt under the next clause which provides an exemption for Government ships, fishing vessels, pleasure craft and other ships under 12 metres in length.

Sub-clause (2) provides that the Minister may exempt an Australian-owned ship on demise charter to a foreign resident from the requirement that the ship have Australian registration. This is complementary to the provisions enabling foreign-owned but Australian-chartered ships to be registered in Australia.

CLUASE 12 (cont'd)

Sub-clause (3) provides that where a ship is required to be registered but is not registered the owner may be fined and the ship detained until registration is effected.

Sub-clause (4) provides that foreign registration is not a defence to a prosecution for failure to take out Australian registration.

CLAUSE 13

EXEMPTIONS FROM REGISTRATION

Australian-owned ships less than 12 metres in length and Government ships, fishing vessels, and pleasure craft are exempt from the requirement to be registered.

CLAUSE 14

SHIPS PERMITTED TO BE REGISTERED

This clause provides that the following ships may be registered:

- (a) Australian-owned ships exempt under the preceding clause from compulsory registration
- (b) ships less than 12 metres wholly owned by Australian residents or by Australian residents and nationals

CLAUSE 14 (cont'd)

- (c) ships less than 12 metres operated solely by Australian residents or by Australian residents and nationals or both
- (d) ships on demise charter to Australian based operators.

CLAUSE 15

APPLICATION FOR REGISTRATION

Applications for registration are to be in accordance with the regulations.

CLAUSE 16

TONNAGE MEASUREMENT OF SHIP BEFORE REGISTRATION

Sub-clause (1) provides that a ship is not to be registered without a tonnage measurement certificate issued under, or having effect by virtue of, the Navigation Act 1912. The tonnage of a ship is used in Australia and overseas as a basis for the application of marine requirements, port and harbour dues, shipowners' liability and other facets of maritime administration.

Sub-clause (2) exempts a prescribed ship or class of ships from the provisions of sub-clause (1). In particular this refers to the measurement of yachts which are sometimes measured under different rules especially for racing purposes.

CLAUSE 17

FOREIGN REGISTERED SHIPS NOT REGISTRABLE UNDER THIS ACT

Sub-clause (1) provides that a ship registered under foreign legislation is not to have Australian registration.

Sub-clause (2) provides that where application for Australian registration is made in relation to a ship which has had foreign registration, the application is to be accompanied by such evidence as the Registrar determines that:

- (a) the ship no longer has foreign registration, or
- (b) steps have been taken or, are proposed to be taken, to close the foreign registration on or before Australian registration.

A decision by the Registrar under this sub-clause is upon application reviewable by the Administrative Appeals Tribunal.

CLAUSE 18

ENTRY OF PARTICULARS IN REGISTER

This clause provides that the Registrar is to register a ship by entering prescribed particulars in the Australian Register of Ships.

These particulars describe the ship, give ownership particulars and indicate the encumbrances on the ship.

CLAUSE 19

GRANT OF REGISTRATION CERTIFICATE

Upon registration of a ship, the Registrar is to grant a registration certificate containing the particulars entered in the Register relating to the ship and such other matters as are prescribed.

CLAUSE 20

CUSTODY OF REGISTRATION CERTIFICATE

Sub-clause (1) provides that the registration certificate or a provisional certificate is to be used only for lawful navigation of a ship and is not to be subject to detention by reason of a claim to any title to, lien or charge on, or interest in, the ship.

Sub-clause (2) provides that a certificate or a provisional certificate is, unless there is reasonable excuse, to be delivered on demand to the person entitled to custody of it for purposes of lawful navigation or to the Registrar, a Deputy Registrar, an Australian diplomatic or consular representative or another person entitled by law to require its delivery.

Sub-clause (3) provides that in proceedings in respect of an offence concerning custody of a certificate a Court can make and serve on the Registrar an order to the effect that the certificate is lost.

CLAUSE 21

NEW CERTIFICATES AND PROVISIONAL CERTIFICATES

Sub-clause (1) provides that the Registrar will on application grant a new certificate if a certificate is mislaid, lost or destroyed or lodged with the Registrar.

Sub-clause (2) provides that an Australian diplomatic or consular officer will subject to the regulations, issue a provisional registration certificate if a certificate is mislaid, lost or destroyed while a ship is

- at a foreign port where there is Australian diplomatic or consular representation
- at sea or at a port where there is no Australian diplomatic or consular representation but arrives at a port where there is such representation before arriving in Australia.

Sub-clause (3) provides that a provisional certificate has the same effect as a registration certificate until the ship arrives at an Australian port or until 6 months after it is issued.

Sub-clause (4) provides that an Australian diplomatique or consular representative shall forward to the Registrar a copy of the provosional registration certificate issued by him.

CLAUSE 21 (cont'd)

Sub-clause (5) provides that the Registrar may extend the period of effect for a provisional certificate beyond 6 months. This decision is upon application reviewable by the Administrative Appeals Tribunal.

Under sub-clause (6) a provisional certificate is to be lodged with the Registrar within 10 days of the ship arriving at an Australian port.

Sub-clause (7) provides that the Registrar can at his discretion grant either a further provisional certificate or a new registration certificate when a provisional certificate has been lodged under sub-clause (6).

A provisional certificate issued under sub-clause (7)(a) is to have the same effect as a registration certificate for a period specified by the Registrar.

CLAUSE 22

PROVISIONAL CERTIFICATES FOR SHIPS BECOMING ENTITLED TO BE REGISTERED ABROAD

Sub-clause (1) provides that an Australian diplomatic or consular officer may issue a provisional certificate if a ship becomes entitled to have Australian registration while the ship is

- at a foreign port where there is an Australian diplomatic or consular representative, or

CLAUSE 22 (cont'd)

- at sea or at a port where there is no Australian diplomatic or consular representative but arrives at a port where there is such representation before arriving in Australia.

A decision under this sub-clause not to grant a provisional certificate is upon application reviewable by the Administrative Appeals Tribunal.

Sub-clause (2) provides that a provisional certificate has the same effect as a registration certificate until the ship arrives at an Australian port or for six months after issue.

Sub-clause (3) provides that an Australian diplomatic or consular representative who issues a provisional certificate is to forward a copy of the certificate to the Registrar.

Sub-clause (4) provides that the Registrar may extend the period of effect for a provisional certificate beyond 6 months. This decision is upon application reviewable by the Administrative Appeals Tribunal.

Under sub-clause (5) a provisional certificate is to be lodged with the Registrar within 10 days of the ship arriving at an Australian port.

Sub-clause (6) provides that the Registrar may grant a further provisional certificate after the initial provisional certificate has been lodged following arrival in Australia. This decision is upon application reviewable by the Administrative Appeals Tribunal.

Sub-clause (7) provides that a provisional registration certificate issued under sub-clause (6) has the same effect as a registration certificate for a period specified by the Registrar.

CLAUSE 23

TEMPORARY PASSES

Sub-clause (1) provides that, where the Minister is satisfied by special circumstances he may direct the Registrar to issue a 'temporary pass' for an unregistered ship to travel on an international voyage. A decision under this sub-clause is upon application reviewable by the Administrative Appeals Tribunal.

Sub-clause (2) provides that a temporary shall be in a form prescribed by regulation.

Sub-clause (3) provides that a temporary pass is to specify the voyage which the ship is authorised to make and the time during which the pass remains valid. A temporary pass has, subject to the matters specified in the pass, the same effect as a registration certificate.

CLAUSE 24

CHANGE IN OWNERSHIP OF SHIP OR SHARE

Where a change occurs in the registered ownership of a ship or share, the registration certificate is to be lodged with the Registrar together with a statement setting out particulars of the change. The Registrar is to endorse particulars of change of ownership on the certificate and enter the particulars in the Register.

CLAUSE 25

USE OF IMPROPER CERTIFICATE

This clause provides for a monetary penalty or imprisonment, or both, if a person uses or permits the use of a registration certificate, provisional registration certificate or temporary pass not legally granted and in force.

CLAUSE 26

MARKING OF SHIP

Sub-clause (1) provides that before registration a ship is to be marked in accordance with the regulations.

Sub-clause (2) provides that the markings are to be maintained. The sub-clause also provides for an offence by the owner and master punishable by an appropriate fine.

Sub-clause (3) provides that markings are not to be concealed, removed, altered, defaced or obliterated.

Sub-clause (4) provides that sub-clauses (2) and (3) do not apply if the action is authorised under the regulations or for the purpose of escaping capture by the enemy.

CLAUSE 27

NAME OF REGISTERED SHIP AND CHANGE OF NAME

Sub-clause (1) provides that a registered ship shall only be known by the name by which it is registered.

Sub-clause (2) provides that an application, in a form prescribed by the regulations can be made to the Registrar for the name of a registered ship to be changed.

Sub-clause (3) provides that the Registrar shall disallow the proposed name if it is a name or a name in a class of names which cannot be used as the per regulations. A decision under this sub-clause is upon application reviewable by the Administrative Appeal Tribunal.

Sub-clause (4) provides that when the Registrar grants a new or changed name then the Register shall be amended, the Registration Certificate endorsed and the ship marked with new or changed name.

CLAUSE 28

POWER OF MINISTER TO DISALLOW NAME PROPOSED FOR SHIP

This clause provides that if the Minister is of the opinion that a name proposed for ship is likely to prejudice the international relations of the Commonwealth, then the Minister may disallow the name by notice in writing to the Registrar.

CLAUSE 29

CERTAIN SHIPS TO HAVE AUSTRALIAN NATIONALITY

This clause lists the ships that are to be taken, for all purposes, to be Australian ships and to have Australian nationality.

They are

- ships registered under this Act
- unregistered Australian owned ships referred to in Clause 13, i.e. Government ships, fishing vessels, pleasure craft and ships under 12 metres in length
- unregistered ships (not being ships required to be registered) that are wholly owned or operated solely by residents of Australia or by Australian residents and nationals or both

For the purpose of the clause "unregistered ship" means a ship not registered in Australia or in another country.

CLAUSE 30

NATIONAL COLOURS AND OTHER FLAGS

Sub-clause (1) provides that the national colours for merchant ships is the red ensign and for all other ships the national flag and the red ensign.

Sub-clause (2) provides that outside Australian waters merchant ships may fly the red ensign at all times but must fly the red ensign at the prescribed times. The same provision applies to all other registered ships in relation to flying the national flag or red ensign. Unregistered ships however have no obligation to fly the national flag or the red ensign at any particular time.

Sub-clause (3) provides that in Australian waters a registered ship shall fly the national flag or red ensign at all prescribed times except where she is authorised to fly the British Blue Ensign under UK legislation (sub-clause 4) or where she is entitled to fly a particular flag under the Flage Act 1953 or a State or Territory flag (sub-clause 5).

Sub-clause (6) provides that a person under this clause shall only permit the flying of one of the mentioned flags at any particular time.

Sub-clause (7) provides that in waters outside Australia none of the flags mentioned in sub-clauses (4) and (5) shall be flown.

Sub-clause (8) prohibits a person from flying the national flag or the red ensign on a ship that is required to be registered but is not registered.

CLAUSE 30 (cont'd)

Sub-clause (9) provides for penalties where the provisions of this clause are contravened.

Sub-clause (10) provides that the owner/operator of an unregistered Australian ship shall upon application be issued with a certificate stating that the ship is entitled to fly the national flag and the red ensign in accordance with this clause.

Sub-clause (11) provides that a certificate under sub-clause 10 is valid for evidentiary purposes.

Sub-clause (12) defines Australian waters for the purpose of flying national colours and defines 'flag' as including an ensign.

CLAUSE 31

DECLARATION OF SHIP'S NATIONALITY BEFORE CLEARANCE

This provides that a Collector of Customs is not to grant a Certificate of Clearance for a ship about to depart from an Australian port to a place outside Australia until the master of the ship has declared the nationality of the ship. The declaration is to be recorded on the Certificate of Clearance.

CLAUSE 32

IMPROPERLY ASSUMING AUSTRALIAN NATIONALITY

This clause provides for penalties including forfeiture of the ship if a person uses the Australian National Flag or the Australian Red Ensign on board or assumes Australian nationality in relation to a ship which is not an Australian ship for the purpose of causing the ship to appear to be an Australian ship, unless this is done to escape capture by an enemy.

CLAUSE 33

CONCEALING AUSTRALIAN NATIONALITY

This provides for penalties, including forfeiture, if the master or owner, of an Australian ship does anything or permits anything to be done for the purpose of

- concealing the nationality of the ship or deceiving any person entitled by law to inquire into the nationality of the ship
- causing the ship to appear not to be an Australian ship.

This clause does not apply if the action taken is for the purpose of escaping capture by an enemy.

CLAUSE 34

INTERPRETATION

Part III of the legislation refers to transfers, transmissions and mortgages in relation to registered ships and for that purpose this clause defines 'ship' to mean a registered ship.

CLAUSE 35

APPLICATION OF AUSTRALIAN SHIPPING COMMISSION ACT

Part III of the legislation is subject to section 48 of the Australian Shipping Commission Act 1956 which imposes restrictions on the transfer or mortgage of certain ships so as to ensure an adequate supply of shipping on the Australian coast.

CLAUSE 36

TRANSFER OF SHIP

Sub-clause (1) provides that a ship or a share is to be transferred by a bill of sale, subject to the next clause which provides for transmission of a ship or a share in a ship by operation of law or by any lawful means other than by transfer by bill of sale.

CLAUSE 36 (cont'd)

Sub-clause (2) provides that where a ship or a share is transferred by bill of sale, the Registrar is required, as soon as practicable after the bill of sale and declaration of transfer by the transferee have been lodged, to enter in the Register the name of the transferee as owner of the ship or share. The Registrar is also required to endorse on the bill of sale that the entry has been made together with the date and time of the entry.

Sub-clause (3) provides that unless the transferee is the Commonwealth, a State or Territory, the declaration of transfer is to include a statement to enable the Registrar to be satisfied that the ship remains eligible for Australian registration.

Sub-clause (4) provides for a modified statement under sub-clause (3) in the case of ships on demise charter to Australian-based operators.

Sub-clause (5) provides that bills of sale which are lodged are to be entered in the Register in order of lodgement.

CLAUSE 37

TRANSMISSION OF SHIP BY OPERATION OF LAW

This clause suitably modifies the requirements of the preceding clause where the transfer of the ship takes place otherwise than by means of a bill of sale. Such a situation would arise in the case of a transmission on the death of the registered owner.

CLAUSE 38

MORTGAGE OF SHIP

This clause provides that a ship or a share may be mortgaged. As soon as practicable after lodgement of a mortgage instrument, the particulars of the mortgage are required to be entered in the Register and the date and time of the entry endorsed on the mortgage instrument. Mortgage instruments are to be registered in order of lodgement and the next clause ensures that the priority of mortgages ranks in order of registration.

CLAUSE 39

PRIORITY OF MORTGAGES

This provides that where two or more mortgages are registered in respect of the same ship or share, the priority of mortgages would follow the order of their registration, irrespective of the dates on which they were made or executed and notwithstanding any express, implied or constructive notice.

CLAUSE 40

MORTGAGE NOT TO CHANGE OWNERSHIP

This clause provides that a mortgage does not have the effect of the mortgagee becoming, or the mortgage ceasing to be, the owner of the ship or share except to the extent necessary to make the ship or share available as a security under the mortgage.

CLAUSE 41

MORTGAGEE TO HAVE POWER OF DISPOSAL

This clause provides that a mortgagee has power to dispose of a ship or share. However, where there are two or more mortgagees of the ship or share, a subsequent mortgagee would not be able to dispose of the ship or share without the consent of every prior mortgagee except under the order of a court.

CLAUSE 42

TRANSFER OF MORTGAGE

This provides that a mortgage of a ship or a share may be transferred by a prescribed instrument of transfer. The Registrar is required, as soon as practicable after lodgement of the instrument of transfer, to enter in the Register the name of the transferee as the mortgagee and endorse on the instrument the date and time of the entry.

CLAUSE 43

TRANSMISSION OF MORTGAGE BY OPERATION OF LAW

Transmission of the interest of a mortgagee in a mortgage could be by operation of law or by lawful means other than transfer by an instrument of transfer, for example upon the death of the mortgagee.

CLAUSE 43 (cont'd)

The Registrar is required as soon as practicable, after lodgement of a declaration of transmission and prescribed evidence of transmission, to register the name of the person to whom the interest is transmitted as mortgagee.

CLAUSE 44

DISCHARGE OF MORTGAGE

This provides that the discharge of a mortgage would be recorded in the Register as soon as practicable after the mortgage instrument and prescribed evidence of the discharge had been lodged.

CLAUSE 45

POWERS OF DISPOSAL BY OWNER

This provides that the registered owner of a ship or share has absolute power to dispose of his interest subject to the legislation and to any rights and powers appearing in the Register to be vested in any other person.

CLAUSE 46

TRUSTS NOT RECOGNIZED

This clause provides that notice of a trust is not to be entered in the Register or to be receivable by the Registrar. A similar provision is contained in section 56 of the 1894 Act. It should be noted however that the next clause preserves the right of a person to enforce a beneficial interest.

CLAUSE 47

EQUITIES NOT EXCLUDED

This clause provides that beneficial interests may be enforced against an owner or mortgagee of a ship or share in the same manner as in respect of any other property subject to the following clauses -

Clause 41 - Powers of disposal of mortgages

Clause 45 - Powers of disposal of owner

Clause 46 - Trusts not to be registered.

CLAUSE 48

REGISTRAR AND DEPUTY REGISTRARS OF SHIPS

This provides that a Registrar of Ships, under the Secretary to the Department of Transport, will be responsible for maintenance of the Register and will have chief control of the Australian Shipping Registration Office. There will be such number of Deputy Registrars as determined by the Minister for Transport. The Deputy Registrars will, subject to the control of the Registrar, have all the powers and functions of the Registrar other than his power of delegation.

CLAUSE 49

FUNCTIONS AND POWERS OF REGISTRAR

Sub-clause (1) provides that the functions of the Registrar will include the following in regard to maintenance of the Register

- to receive and record information and documents
- to grant, issue, vary or revoke certificates and other documents
- to issue copies, of and the extracts from, any such certificates and other documents and of Register entries.

CLAUSE 49 (cont'd)

Sub-clause (2) provides that the Registrar has power to do all things necessary or convenient to be done for, or in connection with, or incidental to, the performance of his functions.

CLAUSE 50

APPOINTMENT OF REGISTRAR AND DEPUTY REGISTRARS

This provides that the Registrar and Deputy Registrars are to be officers or employees of the Australian Public Service appointed by the Minister.

CLAUSE 51

ACTING REGISTRAR AND DEPUTY REGISTRARS

This clause makes appropriate provision for the appointment of acting Registrars and Deputy Registrars.

CLAUSE 52

DELEGATION BY MINISTER

This provides that the Minister can delegate his powers under the Act other than his power of delegation. A power so delegated exercised by the delegate would be deemed to be exercised by the Minister. A delegation does not prevent the Minister exercising a power.

CLAUSE 53

DELEGATION BY REGISTRAR

This provides that the Registrar can delegate his powers under the Act other than his power of delegation to an officer of or employee in the Australian Public Service. A power so delegated exercised by the delegate would be deemed to be exercised by the Registrar. A delegation does not prevent the Registrar exercising a power.

CLAUSE 54

REGISTRATION OFFICE

Sub-clause (1) provides that there would be the Australian Shipping Registration Office and such numbers of Branch Registration Offices as the Minister determines at places determined by the Minister.

Sub-clause (2) provides that the established of the Registration Office and the Branch Offices at a particular place shall be published in the Gazette.

CLAUSE 55

SEAL OF REGISTRATION OFFICE AND SIGNATURE OF REGISTRAR

This clause provides that the Registrar will have custody of a seal of the Australian Shipping Registration Office. Judicial notice is to be taken of the seal and it is to be presumed that it is duly affixed. Where a signature on a document purports to be that of the Registrar or a person empowered by delegation to sign the document it will be presumed to be the signature of the holder of the office of Registrar or of a person by delegation to sign the document until the contrary is proved.

CLAUSE 56

AUSTRALIAN REGISTER OF SHIPS

This establishes the Australian Register of Ship. 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.

CLAUSE 56

AUSTRALIAN REGISTER OF SHIPS

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CLAUSE 57

INSPECTION OF REGISTER

This provides that anyone may inspect the Register during normal business hours upon payment of a fee and upon payment of a further fee anyone may obtain a copy of, or an extract from, any entry in the Register.

CLAUSE 58

OBSOLETE OR INCORRECT ENTRIES IN REGISTER

This provides that where no entry or amendment has been made in the Register in relation to a ship for a period and the Minister has reason to suspect that

- any particulars entered in the Register, other than those relating to a mortgage, are incorrect
- required notice, information or documentation has not been provided, or
- the ship has been lost, taken by an enemy, burnt or broken up

the Minister may direct the registered agent or an owner of the ship to provide him within a specified period with specified information and documents.

CLAUSE 58 (contd)

If the Minister does not receive the information and documents within the specified period or considers after receiving them that the circumstances justify it, he may direct the Registrar either to close the registration or to make an entry or amendment in the Register.

If the Minister directs the closure of the registration and also states in the direction to the Registrar that he is of the opinion that the ship has been lost, taken by an enemy, burnt or broken up, the registration is deemed to be closed except in so far as it relates to any unsatisfied mortgage.

CLAUSE 59

RECTIFICATION OF REGISTER

This clause provides that the Federal Court of Australia or the Supreme Court of a State or Territory may on application of an aggrieved person or of the Registrar direct rectification of the Register. Notice of an application for rectification is to be given to the Registrar who may appear and be heard and is to appear if directed. A copy of the order of the Court is required to be served on the Registrar who is required to rectify the Register accordingly.

CLAUSE 60

CORRECTION OF CLERICAL ERRORS IN REGISTER

This permits the Registrar to correct clerical errors or obvious mistakes in the Register without the need for formal rectification proceedings.

CLAUSE 61

FALSE ENTRIES IN REGISTER

This clause, taken in conjunction with the general offences provision, makes it an offence to make or cause false entries to be made in the Register.

CLAUSE 62

INTERPRETATION

This provides definitions of 'owner' for the purposes of Part VI - Miscellaneous - to ensure that the obligations of owner under that Part fall on the registered agent in the case of a ship which is not Australian-owned but registered as a

- (a) small craft owned or operated solely by residents of Australia or by residents of Australian and Australian nationals or Australian nationals, or
- (b) a ship on demise charter to Australian-based operators.

CLAUSE 63

LIABILITIES OF SHIPS NOT REGISTERED

Sub-clause (1) provides that a ship required to be registered but not registered would not be entitled to

- be recognised as an Australian ship
- any benefits, privileges, advantages, or protection usually enjoyed by a registered ship.

Sub-clause (2) provides that such a ship would be dealt with as though registered in respect of

- payment of charges
- liability to fines and forfeiture
- punishment of offences committed on board or by persons belonging to the ship.

CLAUSE 64

REGISTERED AGENT

Sub-clause (1) provides that there will be entered in the Register for every registered ship the name and address of

- (a) the operator in the case of small craft operated solely by Australian residents or by Australian residents and nationals or both

CLAUSE 64 (cont'd)

- (b) the charterer in the case of ships on demise charter to Australian-based operators
- (c) the ship's agent or other person who has management of the ship in the case of a ship without a managing owner (other than a ship referred to in (a) or (b))
- (d) the managing owner in any other case.

Sub-clause (2) identifies the person who shall notify the Registrar of any change of name and address of the operator, charterer, ship's agent or managing owner.

CLAUSE 65

ALTERATIONS TO SHIPS

Sub-clause (1) requires notice of an alteration where a registered ship has been so altered as not to correspond with the particulars relating to the ship's tonnage or description contained in the Register. The notice will be given to an Australian diplomatic or consular representative or to the Registrar depending on the location of the ship.

Sub-clause (2) provides that a provisional certificate granted under sub-section (1) has the same effect as a registration certificate till the ship arrives in an Australian port or upon expiry of six months after issue.

CLAUSE 65 (cont'd)

Sub-clause (3) provides that a proper officer upon issuing a provisional certificate shall send a copy to the Registrar together with a prescribed statement giving the particulars of issue.

Sub-clause (4) provides that a Registrar may extend the six month period of validity of a provisional certificate. This decision is upon application reviewable by the Administrative Appeals Tribunal.

Sub-clause (5) provides that a person possessing a provisional certificate must lodge it with the Registrar within 10 days after arriving in an Australian port.

Sub-clause (6) provides that the Registrar shall subject to the requirements of Part II of the Act enter the particulars in the Register and issue a new registration certificate.

Sub-clause (7) provides that a notice required to be given under this section is a continuing requirement even if the notice was not given at the time of the alteration.

Sub-clause (8) places a penalty on the owner of the ship in respect of each day he fails to provide the notice stipulated under this section.

CLAUSE 66

SHIP LOST OR CEASING TO BE ENTITLED TO BE REGISTERED

Sub-clause (1) provides that the owner of a ship will be required to notify the Registrar if a registered ship is lost, taken by an enemy, burnt or broken up or ceases to be entitled to be registered.

Sub-clause (2) provides for the Registrar to make an entry of the event to which a notice under sub-clause (1) relates.

Sub-clause (3) provides that where an entry has been made that:

- (a) the ship has been lost, taken by an enemy, burnt or broken up, the registration is deemed to be closed except in so far as it relates to any unsatisfied mortgage
- (b) the ship has ceased to be entitled to be registered, the registration is deemed to be closed subject to the following provisions.

Sub-clause (4) provides for the Registrar to give notice to mortgagees after receipt of notice that a ship subject to an unsatisfied mortgage or mortgagee has ceased to be eligible for registration. The registration would not be closed in so far as it relates to an unsatisfied mortgage or mortgages.

CLAUSE 66 (cont'd)

Sub-clause (5) provides that registration is so far as it relates to mortgages is to be closed 60 days after a notice under sub-clause (4) subject to other provisions of the clause.

Sub-clause (6) provides that a mortgagee receiving a notice may make application to the Supreme Court of a State or Territory within 60 days or such extended time as a Court allows.

The Court might

- order the sale of the ship and its equipment
- make other orders for the distribution of the proceeds of the sale
- make orders and give directions with respect to the closure of the registration.

Sub-clause (7) provides that notice of an application under sub-clause (6) is to be served on the Registrar.

Sub-clause (8) provides that an order under sub-clause (6) may be on such terms and conditions as the Court sees fit.

Sub-clause (9) provides for the Registrar to give effect to orders or directions of the Court in relation to the Register.

CLAUSE 66 (cont'd)

Sub-clause (10) provides for delivery of the registration certificate or provisional certificate where the registration is closed or deemed to be closed under this clause.

Sub-clause (11) provides that nothing in the clause is to prejudice rights of a mortgagee existing apart from this clause.

CLAUSE 67

POWER TO INQUIRE INTO OWNERSHIP OF REGISTERED SHIP

This provides that if the Minister believes that a registered ship is not entitled to be registered, he could require the registered agent to supply evidence of ownership within a specified period.

If evidence of entitlement to the satisfaction of the Minister is not provided, the Minister could direct the Registrar that the registration be closed. Provisions of clause 66 in relation to notice of a ship ceasing to be entitled to be registered would apply.

CLAUSE 68

UNREGISTERED SHIPS ENTITLED TO BE REGISTERED NOT TO LEAVE AUSTRALIA

This provides that an unregistered ship entitled to be registered is not to leave Australia, subject to a fine on conviction. In addition, a Collector of Customs is not to issue a Certificate of Clearance under the Customs Act 1901 in respect of such a vessel.

This does not apply to a prescribed ship or ships in a prescribed class of ships.

CLAUSE 69

UNREGISTERED SHIPS ENTITLED TO BE REGISTERED NOT TO LEAVE FOREIGN PORTS

This clause provides that an unregistered ship entitled to be registered is not to leave a foreign port at which there is Australian diplomatic or consular representation unless a registration certificate or a provisional certificate has been issued. Failure to comply with this provision makes the master and owner of the ship guilty of an offence.

This does not apply to a prescribed ship or ships in a prescribed class of ships.

CLAUSE 70

PROCEEDINGS ON FORFEITURE

This provides that where a ship or a share is subject to forfeiture the following 'officers' may seize and detain the ship

- an officer or employee of the Commonwealth authorized by the Minister
- a member of the Australian Federal Police or a State Public force
- a member of an arm of the Defence Force.

The Minister could apply to the Supreme Court of a State or Territory for an order that the ship and equipment be forfeited to the Commonwealth. Anything forfeited would become Commonwealth property and could be dealt with as the Minister see fit.

CLAUSE 71

DETENTION OF SHIPS

This clause provides that an 'officer' defined in the previous clause could detain a ship. A detained ship is not to go to sea before its release and a Collector of Customs is not to grant a Certificate of Clearance in respect of a detained ship.

CLAUSE 72

TAKING OFFICERS TO SEA

This clause provides that an officer exercising powers or performing duties or functions under the Act is not to be taken to sea without his consent. The owner or master would be eligible to pay expenses incidental to his return, in addition to any penalty.

CLAUSE 73

FALSE STATEMENTS

This provides that it will be an offence to cause or attempt to cause an officer to do or not to do any act or thing in the exercise of powers of the performance of duties or functions by means of

- a statement known to be false or misleading
- a document known to contain information that is false or misleading.

This also provides that a person shall not

- make to an officer an oral or written statement
- present to an officer a written statement

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

CLAUSE 73 (contd)

For the purposes of an application in relation to a corporation, a statement used by a person acting on behalf of a corporation will be deemed to have been used by the corporation. In addition, the knowledge of any person employed by or concerned with the management of the corporation will be deemed to be knowledge of the corporation.

CLAUSE 74

OFFENCES - GENERAL

Sub-clause (1) provides that a person who contravenes or fails to comply with any of the mentioned sections and sub-sections is guilty of an offence.

Sub-clause (2) provides that where the owner of the ship is guilty of an offence against any of the mentioned sections or sub-sections the registered agent of the ship is also guilty.

Sub-clause (3) provides for penalties to be imposed on persons committing an offence against this Act.

Sub-clause (4) provides that a director, manager, secretary or other officer of a corporation which is guilty of an offence who is knowingly concerned in or a party to the offence is to be deemed to be guilty of that offence.

CLAUSE 75

PROSECUTION OF OFFENCES

Sub-clause (1) provides for offences, other than indictable offences, to be prosecuted summarily.

Sub-clause (2) provides that a court of summary jurisdiction may hear and determine an indictable offence if the court is satisfied it is proper to do so and the defendant and the prosecutor consent.

Sub-clause (3) fixes the penalties that can be imposed for indictable offences dealt with summarily.

CLAUSE 76

JOINDER OF CHARGES AND PENALTIES FOR CERTAIN OFFENCES

Sub-clause (1) provides that charges against the same person for any number of offences may be joined in the same information or complaint if the offences relate to a failure to do the same thing or act in relation to failure to

- maintain a ship's markings
- make application 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.

CLAUSE 76 (cont'd)

Sub-clause (2) provides that if a person is convicted of two or more offences referred to in sub-clause (1) the Court may impose one penalty, but that penalty is not to exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

CLAUSE 77

ADMISSIBILITY OF DOCUMENTS IN EVIDENCE

Sub-clause (1) provides that a document declared by the legislation to be admissible in evidence is admissible as prima facie evidence of

- any matter stated in the document in pursuance of the legislation or of any duty under the legislation
- the fact that it was signed by the person by whom it purports to be signed.

Sub-clause (2) provides that the Registrar or a Deputy can supply copies of, or extracts from, an entry in the Register or any document forming part of, or associated with, the Register and certify them by signature and sealed with the seal of the Registration Office.

CLAUSE 78

REVIEW OF CERTAIN DECISIONS

This provides that a person who is affected by certain decisions of the Minister or Registrar or of a proper officer can apply to the Administrative Appeals Tribunal for review of their decision.

CLAUSE 79

PRESERVATION OF STATE AND TERRITORY LEGISLATION

This clause provides that this Act is not intended to exclude or limit the operation of any State or Territory law which provides for the recording or registration as long as that provision is not for the purpose of 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.

CLAUSE 80

REFERENCES IN OTHER LAWS

This provides that in any Commonwealth, State or Territory law (other than a law declared by the regulations to be a law to which the clause does not apply) or any instrument having effect under such a law, unless the context requires otherwise, a reference to

CLAUSE 80 (cont'd)

- a ship registered in Australia is to be read as a reference to a registered ship
- the certificate of registry is to be read as a reference to the registration certificate or provisional registration certificate
- port of registry is to be read as a reference to the home port.

CLAUSE 81

JURISDICTION OF TERRITORY SUPREME COURTS

This clause confers jurisdiction, to the extent the Constitution permits, on the Supreme Court of each Territory to deal with obsolete or incorrect entries in the Register, mortgages outstanding on ships about to be removed from the Register and forfeiture proceedings.

CLAUSE 82

APPEALS

This clause provides for appeal to higher courts from judgements or orders of the Supreme Court of a State or Territory.

CLAUSE 83

REGULATIONS

This clause provides that the Governor-General may make regulations prescribing all matters required or permitted by the legislation to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the legislation.

CLAUSE 84

INTERPRETATION

This provides that in Part VII of the legislation - Transitional Provisions - unless the contrary intention appears 'commencing date' means the date that the legislation will come into operation. This is a date to be fixed by Proclamation.

CLAUSE 85

ADDITIONAL OPERATION OF PART

This clause provides that Part VII has the effect it would have if a reference in the next clause to a ship entitled to be registered included a reference to a ship other than a ship entitled to be registered.

CLAUSE 86

SHIPS REGISTERED IN AUSTRALIA UNDER PREVIOUS LAW
DEEMED REGISTERED UNDER THIS ACT

Sub-clause (1) provides that ships entitled to be registered under the legislation that are immediately before commencing date of the legislation registered at a port in Australia in accordance with the United Kingdom Merchant Shipping Act 1894 are to be deemed on and from that date to be registered under the Australian legislation.

Sub-clause (2) provides that an entry or record in a register book at an Australian port immediately before the commencing date of the Australian system is to be deemed to be an entry or record in the Australian Register.

CLAUSE 87

TRANSFER OF REGISTRATION FROM FOREIGN PORTS OF SHIPS
ENTITLED TO BE REGISTERED

If a ship entitled to be registered is registered in a foreign country under provisions corresponding with the United Kingdom Merchant Shipping Act 1894 or under provisions which correspond to a sufficient extent, a ship permitted to be registered may or a ship required to be registered shall subject to penalties within 6 months of commencing date be registered through a transfer to the Australian Register.

CLAUSE 87 (cont'd)

The transfer is not to take place unless the officer responsible for the maintenance of the foreign register:

- (a) consents to closure of registration
- (b) transmits to the Australian Registrar
 - particulars relating to the ship
 - the names of owners and mortgagees
 - any document or copy of a document made in accordance with a provision of the law of the foreign country corresponding with a provision of the Merchant Shipping Act 1894, being a document kept by the person responsible for the maintenance of the Register.

A decision by the Registrar whether the provisions under which the ship is registered correspond sufficiently for the purposes of this clause is upon application reviewable by the Administrative Appeals Tribunal.

CLAUSE 88

INSTRUMENTS MADE UNDER PREVIOUS LAW OR CORRESPONDING
FOREIGN LAW CONTINUE IN FORCE

This clause provides that unless the Registrar determines otherwise:

- (a) any instrument or other document (except for a certificate of mortgage or a certificate of sale) or note made on such an instrument or document in accordance with the United Kingdom Merchant Shipping Act 1894 and in effect immediately before commencing date is to have same effect on and after commencing date as if made under the Australian legislation
- (b) any instrument or other document (except for a certificate or mortgage or a certificate of sale) or note made on such instrument or document in respect of a ship for which an application for registration is made or any note on such a document which is
 - made in accordance with a provision of a law of a foreign country concerning registration which corresponds with a provision of the United Kingdom Merchant Shipping Act 1894, and
 - in effect immediately before the commencing date when lodged with or received by the Registrar

is to continue to have the same effect as if made under the Australian legislation.

CLAUSE 88 (cont'd)

The Registrar can refuse to accept an instrument or document if he considers that the instrument or document did not sufficiently comply with the requirements of the legislation or that it would be inappropriate to accept it. This refusal is however upon application reviewable by the Administrative Appeals Tribunal.

CLAUSE 89

APPLICATIONS UNDER PREVIOUS LAW

This provides that if an application for registration under the Merchant Shipping Act 1894 was not finalised before the commencing date, the Registrar shall treat the application as though made under the Australian legislation if satisfied that the requirements of Australian and United Kingdom legislation are substantially similar

A decision under this provision is upon application reviewable by the Administrative Appeals Tribunal.

CLAUSE 90

CERTIFICATES OF REGISTRY MAY BE RECALLED

This clause provides that certificates issued under the 1894 Act in respect of ships registered at Australian ports can be recalled for replacement by Australian certificates.

CLAUSE 91

REGISTERS KEPT UNDER PREVIOUS LAW INCORPORATED WITH REGISTER

This provides that register books kept at Australian ports under the 1894 Act are to be deemed to be part of the Australian Register. Documents associated with these register books are to be retained by the Australian Registrar at the Australian Registration Office.

CLAUSE 92

VERIFICATION OF PARTICULARS IN REGISTERS KEPT
UNDER PREVIOUS LAW

Sub-clause (1) provides that the Registrar could require the registered agent of a ship deemed to be transferred from the United Kingdom Register to the Australian Register to, within a specified period,

- verify matters or particulars appearing in a Register kept under the 1894 Act
- furnish such information and documents as would be required in connection with a registration application.

Sub-clause (2) provides that if the registered agent fails to verify a matter or furnish the required information or documents, the Minister may direct that the registration be closed. Clause 66 would apply as if the ship had ceased to be entitled to be registered.

CLAUSE 93

SHIPS DEEMED TO BE REGISTERED TO CEASE TO BE
REGISTERED IF NOT ENTITLED TO BE REGISTERED

This provides that at any time after 6 months from commencing date if the Registrar has reason to believe that a ship deemed to be registered on the commencing date is not entitled to be registered he is to indicate this to the owners and any mortgagees.

If evidence that the ship is not entitled to be registered is not produced within three months of the last day on which the notice was served the Registrar shall close the registration of the ship.

CLAUSE 94

REGISTRAR MAY DEFER REGISTRATION

This provides that the Registrar may defer registration transactions for 14 days from commencing date. Documents produced for lodgement or lodged during that period would be subsequently dealt with in order of receipt.

In relation to a document produced for lodgement during that period the document will be deemed to be lodged when it was produced if the Registrar considers that the document is in a form satisfactory for lodgement.

In relation to a document lodged, the record or entry in the Register or other action relating to the document will be deemed to have been done when the document was lodged.

CLAUSE 95REGULATIONS FOR TRANSITIONAL PURPOSES

This provides that regulations may be made for transitional purposes.

FLAG AMENDMENT BILL 1981

CLAUSE 1SHORT TITLE

This is the normal formal clause providing for the citation of the Act and for the Flags Act 1953 to be referred to as the Principal Act.

CLAUSE 2COMMENCEMENT

This provides for the Act to come into operation on the day on which the Shipping Registration Act comes into operation, which is a date to be fixed by Proclamation.

CLAUSE 3REPEAL AND SUBSTITUTION OF SECTIONS 3 AND 4

This provides for the repeal and substitution of Section 3 and 4 of the Flags Act 1953.

The existing section 3 declares the flag described in Schedule 1 to be the Australian National Flag. This section requires alteration because the new Schedule 1 describes two flags, the Australian National Flag and the Australian Red Ensign.

The existing section 4 gives the name the "Australian Red Ensign" to the flag referred to in section 406 of the Navigation Act which is being repealed by the Navigation Amendment Bill 1981. The new section 4 takes account of that repeal and also of the insertion of the description of the Australian Red Ensign in Schedule 1.

CLAUSE 4

FIRST SCHEDULE

This provision for the revision of Schedule 1 by inserting a new clause 1 and making a consequential adjustment to the heading.

The substance of the alteration is to omit the reference to the British Blue Ensign in the description of the Australian flag and to use the Schedule to describe both the Australian National Flag and the Australian Red Ensign which are identical in design except that one is a blue flag and the other is red.

At present the Australian Red Ensign is described in part in section 406 of the Navigation Act but that section is being repealed by the Navigation Amendment Bill 1981.

CLAUSE 5

FORMAL AMENDMENTS

This clause provides for the formal amendment of the heading of the present Schedules.

NAVIGATION AMENDMENT BILL 1981
CLAUSE 1

SHORT TITLE, ETC

This is the normal formal clause providing for the citation of the amending Act and for the Navigation Act 1912 (which citation, under the Acts Interpretation Act, includes all amendments in operation) to be referred to as the Principal Act.

CLAUSE 2

COMMENCEMENT

Sub-clause (1) provides that the title and commencement provisions as well as three provisions not contingent on the Shipping Registration Act are to come into force on the day on which the Bill receives Royal Assent.

Sub-Clause (2) provides that two provisions that amend the Definition of "ship" inserted by the Navigation Amendment Act 1980 but not yet in force will commence when the 1980 amendment comes into force.

Because most of the provisions of this Bill are consequent upon the Shipping Registration Bill 1980, sub-clause (3) provides for those provisions to come into operation on the same day as the Shipping Registration Act 1980, which is a date to be fixed by Proclamation.

The words 'except as otherwise provided' in Sub-clause (3) refer to various provisions in the Bill that relate to previous amendments not yet in force. These earlier amendments in the Navigation Amendment Acts 1979 and 1980 are to come into force on dates to be proclaimed. Where appropriate, the related provisions of the present Bill are designed to come into force at the same time. In certain cases however, the provisions of the present Bill are conditional and will only take effect if the Shipping Registration Bill commences before certain of the earlier amendments of the Navigation Act come into force.

Sub-clauses (4) and (5) deal with the commencement of Part III of the Bill which inserts the extensive amendments relating to offences and penalties that are set out in Schedule 3 to the Bill. Generally these come into force 28 days after Royal Assent except where the amendment relates to a provision of the Principal Act not then in force. In the latter case the amendment takes effect when the Principal Act provision takes effect.

CLAUSE 3
(Section 6)

INTERPRETATION

This clause makes three adjustments to definitions in section 6 of the Principal Act.

The definition of 'agreement' (as substituted by the 1980 Act but not yet in force) requires a slight amendment to bring it into line with the new section 10 which is being inserted by clause 8 of the Bill. This is provided for in paragraph 3(1)(a) of the Bill and the commencement of that paragraph is specially provided for in sub-clause 3(3). This latter sub-clause is inserted in case the relevant provisions of the 1980 Act (which relate to contracts of sea service in the offshore industry) do not come into operation until after the commencement of the proposed Shipping Registration Act.

The second adjustment is in paragraph 3(1)(b) which omits from section 6 the definition of 'British ship'. That definition is no longer required for the purposes of the Navigation Act because the Shipping Registration Bill does away with the practice of registering ships in Australia as British ships under the provisions of the United Kingdom Merchant Shipping Act 1894.

The third adjustment amends the definition of "ship" as inserted by the 1980 Act to make it clear that an offshore industry mobile unit that is not self-propelled is not a ship for most of the purposes of the Act except where it is appropriate to deal with it in the same way as a ship. Sub-clause 2(2) ensures that this adjustment takes effect when the provision it amends comes into operation.

CLAUSE 4
(Section 7)

DEFINITION OF COASTING TRADE

This clause omits from section 7 an outdated proviso which deems British ships of a specified tonnage and speed not to be engaged in the coasting trade in certain circumstances. The proviso is no longer relevant to present day conditions and, in consequence of the Shipping Registration Bill, it is being omitted.

CLAUSE 5
(New section 7A)

SHIPS REGISTERED IN AUSTRALIA

This clause inserts a new section 7A in the Navigation Act providing that a reference in that Act to a ship registered in Australia is to be a reference to a ship registered under the Shipping Registration Act and also includes a ship required to be registered under the latter Act but not so registered.

The new section 7A replaces section 411 of the Navigation Act which declares that the Act applies to any unregistered British ship which ought to have been registered, as if the ship had been registered in Australia. Clause 38 of the Bill repeals section 411.

CLAUSE 6
(Section 9)

DELEGATION

The Navigation Amendment Act 1980 repealed and replaced the Minister's power of delegation by inserting an updated section 9 which is in line with the provisions of more recent Acts. In particular it overcomes legal doubts by specifically providing that exercise of a delegated power or function by a delegate shall be deemed to have been exercised by the Minister. The new section 9 came into operation on 1 January 1981.

The new section 9 contains a minor deficiency in that it refers to 'the exercise of a power or function' rather than to 'the exercise of a power or the performance of a function'. The clause corrects that deficiency.

The clause also provides that the amendment be deemed to have come into operation on the commencement of the new section 9.

CLAUSE 7
(New section 9A)

INTERPRETATION

Part II of the Principal Act contains a wide range of matters relating to the crewing of ships the qualifications of masters, mates and engineers etc.

These matters have no relevance for barges and other vessels that are not self-propelled and such vessels have traditionally been exempted by Order-in-Council under section 423. The need for such an Order is being removed by inserting the exemption in the Act itself. This is done by inserting a new section 9A.

CLAUSE 8

(New section 10)

APPLICATION OF PART

Section 10 defines the scope of Part II of the Act which deals with a wide range of matters concerning personnel on board ships. At present it declares the Part to apply to British ships and that provision is no longer appropriate, particularly as the term 'British ship' is being removed from the Act in consequence of the Shipping Registration Bill. Moreover, the British Commonwealth Merchant Shipping Agreement 1931, which allowed the Part to be applied to all British ships, was terminated in 1979.

This clause therefore substitutes a new section 10 applying Part I generally to ships (and their owners, masters and crew) which are registered in Australia, engaged in the coasting trade or which otherwise have a definite Australian connection because a majority of the crew are residents of Australia and the ship is operated by Australian interests.

The new section 10 enables many separate application provisions throughout Part II and elsewhere in the Act to be amplified and made more consistent. However some complicated drafting of commencement provisions is required to achieve this. Sub-clause 7(2) is an example.

CLAUSE 9
(Section 14)

MINIMUM COMPLEMENT OF SHIPS

This clause makes a consequential amendment resulting from the new section 10 (See notes on clause 8).

The amendment in sub-clause (1) applies to the new section 14 which was enacted in the 1979 Act and is yet to come into force. Under sub-clause (2) this change will only take place when the 1979 provision comes into operation.

Sub-clause (3) in the meantime makes an appropriate amendment to the existing section 14.

CLAUSE 10
(Section 14A)

AUTHORITY TO TAKE SHIP TO SEA WHERE ORDINARY
COMPLEMENET OF OFFICERS NOT OBTAINED

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

The 1979 Act repealed section 14A of the Principal Act concerning the authority to take a ship to sea where the ordinary complement of officers has not been obtained, but the repeal has not yet been proclaimed.

This clause omits as redundant from that section references covered by new section 10, to take effect if the repeal of section 14A does not occur before new section 10 is brought into operation.

CLAUSE 11
(Section 19)

APPLICATION OF DIVISION

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

The 1979 Act introduced a new Division 3 not yet in force of Part II of the Principal Act dealing with the qualifications of masters, officers and seamen and section 19 in that Division sets out the ships to which the provisions of the Division are to apply. New section 10 sets out the ships to which the whole of Part II is generally to apply and section 19 is therefore no longer needed.

This clause repeals section 10 but provides that the repeal will not come into force until new Division 3 comes into operation, if that has not occurred before this Act comes into operation.

CLAUSE 12
(Section 26)

OFFICERS TO BE ABLE TO SPEAK AND WRITE THE
ENGLISH LANGUAGE

This clause makes a consequential amendment resulting from the new section 10 (See notes on clause 8).

The 1979 Act repealed section 26 of the Principal Act requiring officers of ships to be able to speak and write the English language, but the repeal has not yet been proclaimed.

This clause omits as redundant from that section references covered by new section 10 being substituted by this Bill, to take effect if the repeal of section 26 does not occur before new section 10 is brought into operation.

CLAUSE 13
(Section 39D)

BOAT-HAND EFFICIENCY

This clause makes a consequential amendment resulting from the new section 10 (See notes on clause 8).

The 1979 Act repealed section 39D of the Principal Act relating to boat-hand efficiency, but the repeal has not yet been proclaimed.

This clause omits as redundant from that section references covered by new section 10 being substituted by this Bill, to take effect if the repeal of section 39D does not occur before new section 10 is brought into operation.

CLAUSE 14
(Section 40)

SEAMAN TO BE ENGAGED IN APPROPRIATE CAPACITY

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

The 1979 Act repealed section 40 of the Principal Act concerning the engagement of seamen in appropriate capacities, but the repeal has not yet been proclaimed.

This clause omits as redundant from that section references covered by new section 10 being substituted by this Bill, to take effect if the repeal of section 40 does not occur before new section 10 is brought into operation.

SECTION 15
(Section 42)

NOTICE OF DISRATING OF SEAMAN

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

The Navigation Amendment Act 1979 repealed section 42 of the Principal Act concerning the notice of the disrating of seamen, but the repeal has not yet been proclaimed.

This clause omits as redundant from that section references covered by new section 10 being substituted by this Bill, to take effect if the repeal of section 42 does not occur before new section 10 is brought into operation.

CLAUSE 16
(Section 43)

CREWS FOR SHIPS

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

The Navigation Amendment Act 1979 repealed section 43 of the Principal Act concerning crew manning in ships, but the repeal has not yet been proclaimed.

This clause omits as redundant from that section references covered by new section 10 being substituted by this Bill, to take effect if the repeal of section 43 does not occur before new section 10 is brought into operation.

CLAUSE 17
(Section 44)

AUTHORITY TO TAKE SHIP TO SEA WHERE ORDINARY
CREW NOT OBTAINED

This clause makes a consequential amendment resulting from the new section 10. (See notes on Clause 8).

The Navigation Amendment Act 1979 repealed section 44 of the Principal Act concerning the authority to take a ship to sea where the ordinary crew complement has not been obtained, but the repeal is not yet in force.

This clause omits as redundant from that section references covered by new section 10 being substituted by this Bill, to take effect if the repeal of section 44 does not occur before new section 10 is brought into operation.

CLAUSE 18
(Section 45)

EMPLOYEMENT OF CREW IN LOADING AND UNLOADING

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Sub-section 45(1), refers to a member of the crew of a ship (whether British or foreign) that is engaged in making overseas voyages. Sub-section 45(1) is in Part II of the Principal Navigation Act and new section 10 being substituted by this Bill sets out the ships to which the whole of Part II is generally to apply.

Sub-clause 17(1) therefore amends the sub-section to refer instead to all ships whether or not the Part applies to them.

CLAUSE 19
(Section 45D)

APPLICATION OF DIVISION TO CONTRACTS OF SEA SERVICE

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Section 45D of the Principal Act, inserted by section 15 of the 1980 Act but not yet in force, modified the engagement provisions of section 45A for the purposes of contracts of sea service in the offshore industry. It is no longer necessary to refer to ships to which section 45A applies because of the new section 10.

CLAUSE 20
(Section 46)

ENGAGEMENT OF SEAMEN IN AUSTRALIA

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Sub-section 46(2A) empowers the Minister to approve special kinds of seamen's articles of agreement in the case of ships to which section 115 does not apply.

The reference to section 115 is a drafting device to adopt the clauses of ships described in sub-section 115(13). These clauses are very similar to the description of ships now being referred to in the new section 10.

The adoption of the new section 10 therefore makes the reference to sub-section 115 superfluous. In order to give greater flexibility the Minister's power is being extended to all ships to which Part II will now apply.

CLAUSE 21
(Section 76)

ACCOUNT OF WAGES ON DISCHARGE

This clause makes consequential amendments resulting from the new section 10. (See notes on clause 8).

Sub-section 76(1) of the principal Act, as amended by the 1980 Act but which amendment is not yet in force, refers to the master of a ship (whether British or foreign) who discharges a seaman at a port in Australia and the master of a ship registered in Australia who discharges a seaman at any port. Sub-section 76(1) is in Part II of the Principal Act and new section 10 being substituted by this Bill sets out the ships to which the whole of Part II is generally to apply. It is therefore no longer necessary to refer to the types of ships in sub-section 76(1) because of the new section 10.

Sub-clause 21(2) omits those references where such omission is to occur after the 1980 Act amendments have come into force.

Sub-clause 21(3) provides for an appropriate change where the omission is to occur before the 1980 Act amendments have commenced to operate.

Sub-clause 21(4) ensures that the port at which the seaman is discharged includes a port outside Australia in line with the provisions of new section 10.

CLAUSE 22
(Section 115)

PUNISHMENT OF BREACHES OF DISCIPLINE BY MASTER

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Sub-section 115(13) becomes superfluous with the adoption of the new section 10 and is repealed by sub-clause 22(1). The latter sub-clause also makes two other consequential adjustments of section 115.

Sub-clause 22(2) is a special commencement provision as one of the provisions of section 115 that is being adjusted is not yet in force. It was inserted by section 57 of the 1980 Act.

CLAUSE 23
(Section 121)

COOKS

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Section 121 sets out the requirements for qualification as a ship's cook. The section has been repealed by the Navigation Amendment Act 1979 but the repeal is not yet in force.

This clause omits as redundant from that section references covered by new section 10 being substituted by this Bill, to take effect if the repeal of section 121 does not occur before new section 10 is brought into operation.

CLAUSE 24
(Section 167)

AGREEMENT OR CONTRACTS OF SEA SERVICE TO BE PRODUCED

This clause corrects a minor error in the amendments (not yet in force) made to section 167 by the Navigation Amendment Act 1980 in consequence of the introduction of contracts of sea service.

The clause also provides that the correction will come into force when the amendments commence operation.

CLAUSE 25
(Section 192A)

DETENTION OF SHIPS TO WHICH PART II DOES NOT APPLY

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Section 192A provides for action to be taken following detention of a foreign ship or after proceedings have been taken against the owner or master of such a ship.

The adoption of the new section 10 makes it desirable to apply the section to all ships that are not under Australian jurisdiction. This is done by referring to ships to which Part II does not apply rather than to foreign ships.

CLAUSE 26
(Section 209)

SEAMAN MAY CLAIM DISCHARGE FROM UNSEAWORTHY SHIP

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Section 209, as substituted by the 1980 Act provides that a seaman may claim his discharge from an unseaworthy ship. Sub-section 209(3) defines the scope of that section in terms similar to but not quite identical with the new section 10. In the interests of uniformity sub-section 209(3) is repealed by sub-clause 26(1) and the section is declared to apply to the ships to which Part II applies, thus adopting the provisions of section 10.

As the new section 209 is not yet in force sub-clause 26(2) provides an appropriate commencement provision for the amendment to coincide with the commencement of the new section.

Sub-clause 26(3) makes an appropriate adjustment to the existing section 209 in case it is still in force when the Shipping Registration Act commences.

CLAUSE 27
(Section 251)

RIGHT TO DECLINE TO GO TO SEA IN SHIP CARRYING
DANGEROUS GOODS

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Section 251, as substituted by the 1980 Act provides that a seaman may decline to go to sea in a ship and be granted a discharge if, in certain circumstances, it is carrying dangerous goods.

Sub-section 251(4) defines the scope of that section in terms similar to but not quite identical with the new section 10. In the interests of uniformity sub-section 251(4) is repealed by sub-clause 27(1) and the section is declared to apply to the ships to which Part II applies, thus adopting the provisions of section 10.

As the new section 251 is not yet in force, sub-clause 27(2) provides an appropriate commencement provision for the amendment to coincide with the commencement of the new section.

Sub-clause 27(3) makes an appropriate adjustment to the existing section 251 in case it is still in force when the Shipping Registration Act commences.

CLAUSE 28
(Section 265)

OBLIGATION TO RENDER ASSISTANCE

Sub-section 265(7) provides that the record to be made by the master of a ship registered in Australia concerning information received that a ship or aircraft is in distress at sea is to be made in the ship's official log-book, if it has such a log-book. The reference to a ship registered in Australia is being changed under this Bill to a ship to which Part II of the Act applies and all those ships are required to have an official log-book.

This clause makes an appropriate adjustment to sub-clause 265(7) in consequence of the adjustment to sub-sections (2) and (6) in Schedule 2.

CLAUSE 29
(Section 269B)

INTERPRETATION

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Section 269B, inserted by the 1979 Act, defines a foreign ship for the purposes of the reporting of the movements of ships.

This clause re-defines a foreign ship as a ship to which Part II of the Act does not apply, thus making the section uniform with the provisions of the new section 10.

As the new section 269B is not yet in force, sub-section 29(2) contains an appropriate commencement provision for the amendment to coincide with the commencement of the new section.

CLAUSE 30
(Section 286)

PERMITS TO UNLICENSED SHIPS

Sub-section 286(1A) provides that a permit to engage in the coasting trade is not to be granted to an unlicensed

foreign ship if an unlicensed British ship is available. References to British ships are being deleted from the Navigation Act because of the introduction of Australian-registered ships under the Shipping Registration Bill.

This clause therefore omits the provision.

CLAUSE 31
(Section 288)

LICENSING OF SHIPS TO ENGAGE IN COASTING TRADE

Paragraph 288(3)(b) provides that a licence to engage in the coasting trade is not to be issued to a foreign ship unless it is provided with the same number of officers and seamen, and with the same accommodation for them, as would be required if it were a British ship registered in Australia or engaged in the coasting trade. References to British ships are being deleted from the Navigation Act because of the introduction of Australian-registered ships under the Shipping Registration Bill.

This clause therefore omits the provision and makes a consequential amendment of sub-section 288(4).

The omission of paragraph 288 (3)(b) is required because, under new section 10 being inserted by clause 8, all ships engaged in the coasting trade will be required to meet the requirements of Part II, including manning and accommodation. At present, the Part only applies to British ships.

CLAUSE 32
(Section 338)

SHIP OWNER NOT TO BE LIABLE IN CERTAIN CASES OF LOSS OF,
OR DAMAGE TO, GOODS

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Old UK law which was replaced by section 338 in the 1979 Act provided that the owner of a British ship was not liable for loss or damage to certain goods on board in certain circumstances. The reference to British ship was changed to "other than a foreign ship" in the process. For the sake of uniformity with the new section 10 and as "foreign ship" is not defined, clause 32 amends the provision to refer to ships to which Part II applies and to ships registered in a prescribed country. No substantive change of any significance is made.

CLAUSE 33
(Section 360)

APPOINTMENT OF ASSESSORS

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Sub-section 360(2) provides that a Court of Marine Inquiry may, if a sufficient number of assessors has not already been appointed to assist the Court, appoint for the purpose one

or more persons who are, or have been, masters of British ships. However, references to British ships are being deleted from the Navigation Act because of the introduction of Australian-registered ships under the Shipping Registration Bill.

Sub-clause (1) therefore requires assessors to be persons who have had experience as masters of ships to which Part II of the Act applies.

Sub-clause (1) also provides that masters of ships registered in a prescribed country may also be appointed. This will ensure that masters who have served in non-Australian British ships will continue to be eligible to be appointed as assessors.

Sub-section 360(2) provides also that a Court of Marine Inquiry, where the inquiry concerns the cancellation or suspension of an engineer's certificate and a sufficient number of engineers is not available, may instead appoint one or more persons who are, or have been, chief engineers of British ships. This provision was omitted by the 1979 Act by an amendment not yet brought into force.

Sub-clause (2) makes an appropriate adjustment to existing sub-section 360(2) in case the provision to be omitted is still in force when the Shipping Registration Act comes into operation.

CLAUSE 34
(Section 364)

POWER OF COURT

Paragraphs (a) and (c) of this clause make consequential amendments to section 364, which deals with the jurisdiction of Courts of Marine Inquiry, as a result of the new section 10. (See notes on clause 8).

Paragraphs (b), (d) and (e) remove special provisions relating to British ships which are no longer required as a result of the proposed Shipping Registration Act and the termination in 1979 of the British Commonwealth Merchant Shipping Agreement 1931.

CLAUSE 35
(Section 406)

AUSTRALIAN FLAG

Section 406 provides that the red ensign is the proper colours to be generally carried by all merchant ships registered in Australia.

This clause omits the provision, as the Shipping Registration Act will prescribe the proper national colours for all Australian ships.

CLAUSE 36
(Section 407A)

TONNAGE MEASUREMENT IN RELATION TO REGISTRATION OF
SHIPS, ETC

Section 407A deals with the subject of tonnage measurement for the purpose of, or otherwise in relation to, the registration of ships in Australia under the Merchant Shipping Act.

This clause amends those provisions by omitting all references to the Merchant Shipping Act, as ships are to be registered in Australia under the provisions of the proposed Shipping Registration Act.

Certain provisions of section 407A are to be omitted by amendments made by the 1979 Act but not yet in operation. Sub-clause (2) makes an appropriate amendment of the section in case the provisions to be omitted are still in operation when the Shipping Registration Act is brought into operation.

CLAUSE 37
(Section 407B)

TONNAGE OF SHIPS OF CERTAIN COUNTRIES

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

The 1979 Act repealed section 407B of the Principal Act providing for recognition of the tonnage denoted in the national papers of certain foreign ships whose tonnage measurement laws coincide with the system used for measuring British ships. The repeal, however, has not yet been proclaimed.

Paragraphs (b) and (c) of this clause make the appropriate adjustments to the section consequent on the introduction of new section 10 being substituted by this Bill, to take effect if the repeal of section 407B does not occur before new section 10 is brought into operation.

Paragraph (a) makes a minor correction to a provision inserted by the 1979 Act.

CLAUSE 38
(Section 411)

UNREGISTERED SHIPS

Section 411 provides that the Navigation Act applies to any unregistered British ship which ought to have been registered under any Imperial Act, as if it had been registered in Australia.

This clause repeals the section as it is being replaced by new section 7A which is inserted by clause 5 of the Bill.

CLAUSE 39
(Section 417)

BIRTHS, DEATHS, ETC

Sub-section 417(2) provides that particulars of the birth, death or disappearance of a passenger being carried to a port in Australia in a British ship not registered in Australia or engaged in the coasting trade are to be entered in the ship's log book and reported to the authorities on arrival. This was part of a common system under the British Commonwealth Merchant Shipping Agreement 1931 which has been terminated.

This requirement is now covered under the law of the country whose flag the ship is carrying and the clause therefore omits the provision and makes a consequential amendment in sub-section (3).

CLAUSE 40
(New section 423B)

POWER TO EXEMPT SHIPS FROM PROVISIONS OF ACT

This clause inserts in the Act a provision enabling the Minister for Transport to grant appropriate exemptions from provisions of the Act, whether with or without conditions, in respect of ships normally confined to State jurisdiction, but coming temporarily under Commonwealth jurisdiction, e.g. by reason of a single inter-State voyage.

The clause also provides that if an exemption is granted conditionally, and a condition is contravened or not complied with, the master and owner of the ship involved are each guilty of an offence.

The provision will, inter alia, enable the Commonwealth to accept State certificates and manning arrangements in appropriate cases and is seen as a desirable adjunct to the re-allocation of Commonwealth and State shipping responsibilities effected by the 1980 Act.

CLAUSE 41
(Schedule IA)

AMENDMENTS TO SCHEDULE IA TO THE PRINCIPAL ACT

This clause makes a consequential amendment resulting from the new section 10. (See notes on clause 8).

Schedule IA sets out the scale of deck officers and engine-room officers and greasers to be carried in British ships registered in Australia or engaged in the coasting trade. The clause replaces the latter reference with a reference to the ships to which Part II applies, thus incorporating the provisions of new section 10.

Schedule IA is to be repealed under the Navigation Amendment Act 1979 but the repeal has not yet come into operation. The clause therefore also provides that the change in respect of British ships will only operate if the repeal has not taken effect.

CLAUSE 42
(Schedule 7)

REPEAL OF SCHEDULE 7 TO THE PRINCIPAL ACT

Schedule 7 sets out the amendments of Part I of the Merchant Shipping Act which were required to be made when provisions relating to tonnage measurement were included in the Navigation Act, thereby superseding the British law on the subject which until that time had been in force in Australia.

The Shipping Registration Bill repeals Part I of the Merchant Shipping Act in its entirety in so far as that Part as so amended, or otherwise affected in its operation, is part of the law of Australia.

Schedule 7 is therefore redundant and this clause repeals it.

CLAUSE 43

CONSEQUENTIAL AMENDMENTS

This clause makes a large number of consequential amendments resulting from the new section 10 (See notes on clause 8).

As these amendments do not require any special commencement provisions they have been set out in a Schedule to the Bill rather than in the body of the Bill.

CLAUSE 44

AMENDMENTS RELATING TO OFFENCES, PENALTIES ETC

This clause effects a complete revision and updating of the offences provisions of the Principal Act by making the amendments set out in Schedule 3.

The general principles underlying these amendments are as follows:

1. The Act should no longer contain a general provision on the lines of the old S.393 creating an offence of contravening or failing to comply with any provision of the Act (or regulations) that does not itself clearly create an offence.
2. Where it is intended to create an offence the section of the Act in question should makes this clear.
3. Pecuniary penalties on corporations should be higher than those on natural persons because a term of imprisonment cannot be inflicted on a corporation and because the deterrent effect of a pecuniary penalty is less immediate in the case of a corporation.
4. Courts of summary jurisdiction should not be empowered to impose penalties in excess of \$5000 on natural persons or \$10,000 on corporations. Where the offence is such that higher penalties are necessary the offence should be an indictable one.

5. Indictable offences should except in the most serious cases, be capable of prosecution in a Court of summary jurisdiction if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.
6. Where general criminal legislation creates an offence provisions of the Navigation Act that duplicate that offence should be repealed.
7. Penalties in respect of industrial-type offences that are currently under discussion with the industry should remain unchanged pending the outcome of those discussions.
8. Offences that are not relevant to present day conditions should be repealed.
9. The general level of pecuniary penalties should be increased in line with present money values.

CLAUSE 45

TRANSITIONAL

The purpose of this clause is to ensure that existing general offence provisions are retained for the time being in the case of provisions that are eventually to be repealed by the 1979 or 1980 Act.

CLAUSE 46

TRANSITIONAL PROVISION RELATING TO SECTION 66
OF PRINCIPAL ACT

This clause inserts an appropriate penalty in a transitional provision set out in section 109 of the 1980 Act. The insertion of the penalty has become necessary in consequence of the repeal and replacement of section 393 of the Principal Act.