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Australian Government

Defence



Australian Government

Australian Maritime Safety Authority

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE DEFENCE SEAWORTHINESS AUTHORITY
(through THE OFFICE OF THE DEFENCE SEAWORTHINESS
REGULATOR)**

AND

THE AUSTRALIAN MARITIME SAFETY AUTHORITY

**FOR FLAG TRANSFER OF COMMERCIAL VESSELS WITH
DEFENCE TASKING**

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PARTIES:

**THE DEFENCE SEAWORTHINESS AUTHORITY
(THROUGH THE OFFICE OF THE DEFENCE SEAWORTHINESS REGULATOR) ("DSwA"
and "ODSwR")**

THE AUSTRALIAN MARITIME SAFETY AUTHORITY, a Commonwealth statutory authority,
created by the *Australian Maritime Safety Authority Act 1990*
("AMSA")

BACKGROUND:

- A. This Memorandum of Understanding (MOU) reflects the close working relationship between the Department of Defence (the ODSwR) and AMSA.
- B. This is a principles-based document that sets the overall framework within which the ODSwR and AMSA will work together collaboratively on matters of mutual interest.

1 DEFINITIONS

- 1.1 In this MOU, unless the context otherwise determines:

Defence means the Department of Defence

Defence Flag Administration means the Chief of Navy Directive 6/2021 – Flag Transfer Arrangement in Navy and any amendment or replacement of that Directive.

Defence Regulatory Jurisdiction means the Defence Seaworthiness Management System (DSwMS) established and implemented under Defence Instruction – Administrative Policy: Annex H – Military Command Support Policy Domain Provisions – MCS1 – Defence seaworthiness management system.

Executive Authorities means the Chief Executive Officer of AMSA and the Defence Seaworthiness Authority (DSwA).

Parties' Representative means a person employed by a Party and authorised to represent the Party in relation to this MOU.

Review means a review of this MOU and does not extend to the initiation of an internal or external review of the policies, procedures or underpinning legislation of either Party. Such reviews are beyond the scope of this MOU.

2 INTENT AND PURPOSE

- 2.1 The intent of this document is to establish processes and procedures between AMSA and the ODSwR, to facilitate the disapplication of legislation administered by AMSA for certain Defence vessels. This may occur for a number of reasons, including as a result of particular operational use or crewing requirements associated with the vessel for a specified period. For the purposes of this MOU, this process is referred to as a transfer of jurisdiction.
- 2.2 The Parties recognise that cooperation is required to facilitate transfer of vessels. This cooperation is aimed at ensuring mutual understanding between the Parties as to the regulatory frameworks applicable in each jurisdiction and a common understanding of how those frameworks are implemented.
- 2.3 The purpose of this MOU is to document the understanding between the Parties to:
 - 2.3.1 Work together to develop policies and procedures regarding the application of legislation administered by AMSA to Defence vessels, including the:
 - (i) *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law);
 - (ii) *Navigation Act 2012* (the Navigation Act);

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- (iii) *Shipping Registration Act 1981* (the SRA);
- (iv) *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (the POTS PPS); and
- (v) *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (the HAFSA).

2.3.2 Establish an agreed process to facilitate the transfer of vessels between:

- (i) the National Law or Navigation Act to the Defence Flag Administration; or
- (ii) the Defence Flag Administration to the National Law or Navigation Act.

Transfers can occur at various points across the life cycle of a vessel, depending on the operational, crewing and employment arrangements in place. The Schedule to this MOU describes the various points at which the National Law or Navigation Act are disapplied and the vessel transfers to Defence Flag Administration and vice versa, and describe the procedures to facilitate the process.

2.3.3 Ensure each process developed under this MOU (as a Schedule) specifies the requirements to ensure that vessels can meet the applicable requirements under the Navigation Act, National Law or Defence Flag Administration.

2.3.4 Establish a process for recognition of eligible service spent within the ODSwR regulatory jurisdiction for commercial seafarers.

2.3.5 Ensure that the process of transferring vessels between jurisdictions, or operating vessels to support Defence, does not compromise Australia's obligations under an international treaty or contravene the requirements of Australian domestic law, or compromise the defence of Australia.

2.3.6 Share information to ensure a common understanding between Parties.

2.4 Each Party will communicate to its employees, officers, servants, agents, contractors, and all other entities acting on its behalf, the arrangements outlined in the MOU and endeavour to ensure that all possible efforts are made to comply with the processes described in this MOU and its Schedule.

3 DURATION

3.1 This MOU commences on the date on which it is signed by the parties, or if signed on separate days, on the date of the last signature and will remain in force for a period of five (5) years.

3.2 This MOU may be extended, varied or terminated at any time through agreement by both Parties, in writing.

3.3 In this MOU unless the contrary intention appears, a reference to the MOU includes the Schedule, as agreed.

4 GOVERNANCE

4.1 The Parties' representatives will meet regularly (nominally 6 monthly) to discuss the relationship between the ODSwR and AMSA as described in this MOU.

4.2 The Parties' representatives may agree, in writing, to modify any part of this MOU.

4.3 The Parties' representatives may escalate any matter under this MOU, including where changes to the Schedule under this MOU cannot be agreed by the Parties' representatives, to the Executive Authorities upon notice in writing being given to the other Party.

4.4 Upon escalation of a matter to the Executive Authorities under clause 4.3, the Executive Authorities will meet to discuss and resolve the matter raised under this MOU.

4.5 Where both Parties are unable to resolve the matter raised under clause 4.3, and following referral to the Executive Authorities under clause 4.3, either Party may terminate this MOU under clause 3.2.

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Termination will occur upon notification in writing of the termination to the relevant Executive Authority.

5 REVIEWS

- 5.1 The Parties will undertake reviews of the document prior to the regular meetings between the Parties representatives. Where required, reviews will identify potential updates and amendments which may be considered in line with 4.1 or as otherwise determined by the Schedule.
- 5.2 Either Party may also initiate a review of this MOU, or a Schedule, or part thereof in accordance with the process set out below:
- (a) a Party representative notifies, in writing, the other Party proposing a review;
 - (b) the Parties representatives meet to discuss the proposed review in consideration of:
 - (i) the event, incident or change that triggered the need to review;
 - (ii) the impact of such event, incident or change;
 - (iii) the aspect of this MOU that requires review and why; and
 - (iv) any proposed change to this MOU;
 - (c) if the Parties representatives are in agreement that this MOU should be varied as an outcome of a review, the Parties will seek, where necessary, in-principle Executive Authority approval to vary this MOU;
 - (d) upon in-principle Executive Authority approval to vary this MOU or Schedule being granted by both Parties, Parties representatives proposing the review under paragraph 5.2(a) will draft a variation to this MOU;
 - (e) the Parties representatives proposing the review under paragraph 5.2(a) will send the draft variation to the other Party for feedback and comment;
 - (f) when both Parties have agreed upon the wording of a draft variation, Parties representatives, where necessary, will simultaneously seek Executive Authority approval of the variation; and
 - (g) where the Executive Authority of both Parties agree to the proposed variation, the MOU or Schedule will be amended.

6 RELATIONSHIP BETWEEN THE PARTIES

- 6.1 The Parties will work closely together to facilitate a whole-of-government approach to regulation.
- 6.2 Each Party will:
- (a) act in a spirit of cooperation and good faith in the performance of this MOU;
 - (b) liaise with the other Party as necessary and communicate promptly and openly;
 - (c) provide all information as specified under the MOU and in a timely manner;
 - (d) cooperate and work collaboratively, encouraging new approaches and creative solutions to achieve positive outcomes and impact;
 - (e) act for a mutual benefit whereby the interactions under this relationship create benefits for both Parties and the national interest; and
 - (f) immediately or as soon as practicable notify the other Party of any matter which will impact the other, relating directly or indirectly to this MOU, to ensure that the Parties are able to perform their roles and responsibilities as set out in this MOU.

7 ROLES OF THE PARTIES

- 7.1 The ODSwR (DSwA) is an independent maritime regulator within Defence, tasked with implementing and managing the Defence Seaworthiness Management System (DSwMS). The DSwMS aims to

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ensure that maritime mission systems are seaworthy, and minimise hazards and risks, so far as reasonably practicable to Defence personnel, the public, and the environment.

- 7.2 AMSA is a Commonwealth statutory authority, created under the *Australian Maritime Safety Authority Act 1990*. AMSA's mission is ensuring safe vessel operations, combating marine pollution and rescuing people in distress, delivered through its commitment to safe and clean seas and saving lives.
- 7.3 The ODSwR recognises the Commonwealth Government's requirements as prescribed in the *Navigation Act 2012*, *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, *Shipping Registration Act 1981* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*, *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* and subordinate legislation.
- 7.4 AMSA recognises the Commonwealth Government's requirements as prescribed in the *Defence Act 1903*, the *Defence Regulation 2016* and subordinate legislation.
- 7.5 The Parties agree that, upon a vessel being transferred from service under the National Law or Navigation Act, to operate under Defence Flag Administration, Defence Regulation only will apply for the period of the transfer and subject to the terms of any agreement between the vessel owner and Defence.

8 SCHEDULE

- 8.1 The ODSwR and AMSA have developed a Schedule to support this MOU.
- 8.2 The Schedule will:
- (a) relate to a mutually agreed issue; and
 - (b) set out an approach for the most effective management of each issue.
- 8.3 In accordance with this MOU, a Schedule:
- (a) is made under this MOU if it is signed by the Executive Authorities, and
 - (b) commences, unless otherwise specified, on the date it is signed by both Executive Authorities, or the day of the final Executive Authority's signature.
- 8.4 Once a Schedule has been made, it may be modified or terminated by a written agreement in accordance with the Schedule. Unless otherwise specified, a modification or termination takes effect from:
- (a) the date the last Executive Authority signs the modification; or
 - (b) the date of notification by the Party requesting the termination.

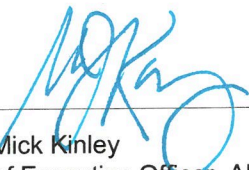
9 GENERAL

- 9.1 The parties acknowledge that this MOU is not legally binding and is not intended to give rise to legally enforceable rights or obligations between the parties.
- 9.2 The parties will bear their own costs incurred in complying with this MOU.
- 9.3 This MOU is governed by the laws of the Commonwealth of Australia.
- 9.4 In the event of conflict between any of the terms of this MOU or any Schedule made under this MOU, the MOU will prevail to the extent of the inconsistency.

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SIGNED for and on behalf of the
AUSTRALIAN MARITIME SAFETY AUTHORITY
by its duly authorised signatory in the presence of:

Signature of Chief
Executive Officer,
Australian Maritime
Safety Authority:



Print Name:

Mr Mick Kinley
Chief Executive Officer, AMSA

Date:

16 February 2023

In the presence of:

Signature of
Witness:



Print Name:

Mr Michael Drake
Executive Director Operations, AMSA

SIGNED for and on behalf of the
OFFICE OF THE DEFENCE SEAWORTHINESS REGULATOR
by its duly authorised signatory in the presence of:

Signature of
Defence
Seaworthiness
Authority,
Department of
Defence:



Print Name:

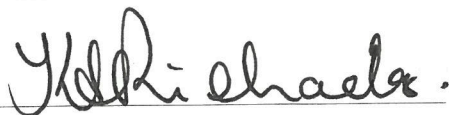
Vice Admiral Mark Hammond, AM, RAN
Chief of Navy

Date:

16 February 2023

In the presence of:

Signature of
Witness:



Print Name:

Rear Admiral Katherine Richards, AM, CSC, RAN
Head Navy Engineering

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APPENDIX 1 – Notification Contact Details

THE OFFICE OF THE DEFENCE SEAWORTHINESS REGULATOR Northcott Drive, Canberra ACT 2610

Regulation and Advocacy: raodswr@defence.gov.au

Tel: (02) 6266 4444

THE AUSTRALIAN MARITIME SAFETY AUTHORITY 82 Northbourne Avenue, Canberra ACT 2612

Flag State Control: FSC@amsa.gov.au

Tel: 1800 627 484

Schedule 1: Temporary in-service transfer process

1. Purpose and definitions

1.1 Purpose

The purpose of this schedule is to explain the process for the transfer of a vessel (for up to 18 months)¹ where the disapplication of legislation administered by AMSA for certain Defence vessels is required.

1.2 Glossary of terms

| | |
|--|--|
| Classification Society | A non-governmental organisation in the shipping industry which establishes and maintains technical standards for the construction and operation of marine vessels and offshore structures. |
| Recognised Organisation (RO) | A Classification Society appointed by AMSA ² to certify compliance with commercial legal requirements (see section 8 and Schedule 1 of Marine Order 1). The RO is responsible for issuing certificates on AMSA's behalf and is the key organisation for management of certification during jurisdictional transfer. |
| Regulated Australian Vessel (RAV) | A vessel as defined in section 15 of the <i>Navigation Act 2012</i> (the Navigation Act). |
| Domestic Commercial Vessel (DCV) | A vessel as defined in Schedule 1, section 7 of the <i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i> (the National Law). |
| Defence representative | A nominated person within Defence (often the Capability Manager's Representative in Defence terminology) responsible for engaging externally to Defence in relation to the jurisdictional transfer for a specified vessel. |

1.3 Background

There are occasions when it may be necessary for Regulated Australian Vessels and Domestic Commercial Vessels to be transferred to Defence's Regulatory Jurisdiction. Transfers of this nature (also referred to as 'change of flag') can occur at various points throughout the life of a vessel.

¹ 18 months is the maximum period of time that AMSA can suspend certificates for a vessel.

² Note: This process assumes that the AMSA-appointed RO is issuing all relevant commercial statutory certification to the identified vessel is also an 'issuing body' appointed by Defence. The list of authorised ROs is IAW RAN standing offer SON3607199 (expires 30 Jun 2024). This approves the following 3 Classification Societies; DNV, Lloyds and BV.

Schedule 1: Temporary in-service transfer process

The process for the temporary transfer of a vessel to Defence Regulatory Jurisdiction will vary depending on whether the vessel is a RAV or a DCV. This Schedule explains how the temporary transfer of a commercially owned/ managed vessel, issued with certificates under the relevant legislation, may be undertaken.

AMSA and the Defence Seaworthiness Authority are the authorities responsible for the approval of these vessel transfers.

1.4 Relevant legislation

The transfer of vessels is provided for under Australian maritime legislation. Relevant provisions include:

- (a) section 10 of the Navigation Act; and
- (b) paragraph 7(3)(c) of the National Law.

The above provisions of the National Law and the Navigation Act provide for the disapplication of these Acts for Defence vessels, in certain circumstances.

Subsection 10(b) of the Navigation Act provides for the disapplication of the Act for the following Defence vessels:

- (a) a warship or other vessel that meets the criteria at subparagraphs 10(a)(i) to (iv); and
- (b) a government vessel that is used only on government non-commercial service as a naval auxiliary;

Paragraph 7(3)(c) of the National Law provides for the disapplication of the National Law to a vessel that meets the following definition of “defence vessel” at section 6 of the National Law:

defence vessel means:

- (a) *a warship or other vessel that:*
 - (i) *is operated for naval or military purposes by the Australian Defence Force or the armed forces of a foreign country; and*
 - (ii) *is under the command of a member of the Australian Defence Force or of a member of the armed forces of the foreign country; and*
 - (iii) *bears external marks of nationality; and*
 - (iv) *is manned by seafarers under armed forces discipline; or*
- (b) *a Government vessel that is used only on government non-commercial service as a naval auxiliary.*

Both Acts are disapplied, where the vessel:

- (a) is under the command of a member of the Australian Defence Force; and
- (b) bears external marks of nationality; and
- (c) is manned by seafarers under armed forces discipline (however described); or
- (d) is a Government vessel that is used only on government non-commercial service as a naval auxiliary.

Schedule 1: Temporary in-service transfer process

1.5 Points of Contact

- (a) AMSA: Regulated Australian Vessels – fsc@amsa.gov.au
- (b) AMSA: Domestic Commercial Vessels – dcvapplications@amsa.gov.au
- (c) AMSA: Shipping Registration Office – sro@amsa.gov.au
- (d) ODSwR: dswms@defence.gov.au

Schedule 1: Temporary in-service transfer process

2. Regulated Australian Vessels to Defence's jurisdiction

Under section 7 of the Shipping Registration Act, this Act does not apply to Defence vessels, however provision/s setting out whether a vessel is to remain registered should be included in the contractual arrangements for the charter of the vessel.

2.1. Initiating transfer to Defence's regulatory jurisdiction

Once Defence has determined that a RAV is to transfer into its jurisdiction, the following is required to occur:

- (a) Discussion and agreement is reached on arrangements for the period of transfer and conditions for the return of the vessel to service as a RAV or DCV (if applicable). This is to occur between the Defence representative and the vessel's owner, and the RO must be kept advised of these arrangements. These conditions should include, where applicable, the notification time required for the transfer to take place; and
- (b) The Defence representative must advise the vessel's RO and AMSA, in writing, of the intention to transfer the vessel to Defence's regulatory jurisdiction for a specified period of time. The Defence representative for liaison with AMSA is the ODSwR and liaison with the RO is through the relevant support organisation (e.g the systems program office which has the contract with the RO).

2.2. Transfer to Defence jurisdiction

This transfer process commences following the finalisation of the agreement reached between the Defence representative, the vessel's owner, and the RO.

2.2.1. Who must be notified?

When contract negotiations and terms have concluded:

- (a) the Defence representative (which is the relevant support organisation (e.g the systems program office) is to notify the vessel's current RO in the first instance;
- (b) The Defence representative capability manager is to notify AMSA (copying in the RO and the ODSwR) that the vessel will be transferred to Defence's regulatory jurisdiction following approval of acceptance from the Defence Seaworthiness Authority through the Defence Seaworthiness Regulator, including the intended date, time and place of the transfer which must be advised to all parties.

NOTE: Any information regarding exemptions/equivalences/waivers/certifications and their status must be provided to the DSwA when seeking approval for transfer to the Defence Jurisdiction.

- (c) The RO contacts AMSA (fsc@amsa.gov.au) providing a report detailing the current status of the classification of the vessel and statutory certification issued under the Navigation Act.

NOTE: Any AMSA issued exemptions/equivalences/waivers or other documents are identified by the RO during this process and suspends certificates issued on behalf of AMSA and re-issues certificates on behalf of Defence Flag Authority.

- (d) The Defence representative is to contact sro@amsa.gov.au for guidance on actions required to update the shipping register and continuous synopsis record (CSR), if required.

Schedule 1: Temporary in-service transfer process

2.2.2. Timing of Notification

- (a) Notification to the RO and AMSA should be made four (4) weeks before transfer (unless exceptional circumstances apply). Notification should include:
 - (i) scheduled transfer date, time and place;
 - (ii) intentions for certificates; and
 - (iii) anticipated duration of transfer (where relevant).
- (b) Where it is proposed that a vessel transfer to Defence's regulatory jurisdiction occurs with less than four (4) weeks' notice, the information specified in (a), is required to be provided to the RO and AMSA as soon as possible, but no later than two (2) days before transfer.
- (c) If there are any changes to the information provided in (a), the Defence representative will advise the RO and AMSA no less than two (2) days before transfer.

2.3 Transfer back to service as a RAV or DCV

2.3.1. Who must be notified of transfer back and when?

The Defence representative is required to notify the vessel owner of the transfer. The vessel owner will then advise the RO of the intended transfer, copying in AMSA and the ODSwR. This notification must include:

- (a) a copy of the Classification Certificate (from a Class society) and documents of compliance relating to the statutory certification that was in force prior to the vessel being in the Defence regulatory jurisdiction;
- (b) an update on any incidents involving the vessel, damage to, or corrective action agreed/required by the owner, or RO, for the vessel;
- (c) update on any conditions of Class, exemptions, equivalences, waivers, defects, any associated documentation and rectification proposals;
- (d) evidence of any major change that was made to the vessel when under Defence regulatory jurisdiction and whether it has been restored to its former condition; and
- (e) where any annual, periodical or renewal survey anniversary dates have passed during the transfer period, and confirmation that the required surveys for the maintenance of commercial statutory certification have been undertaken within the prescribed timeframes. This requires the vessel to be in port where AMSA approved surveyor can conduct surveys.

2.3.2. Transferring back to service as a RAV or DCV

After receiving the above information and the date, time and place of the transfer back:

- (a) For a vessel to be re-certified as a RAV under the Navigation Act, the RO will undertake applicable statutory surveys,³ as required by Marine Orders in the series 1 to 98 that applied to the vessel immediately prior to transfer. Any changes to international

³ Surveys for International Convention certificates and/or corresponding non-SOLAS Safety Certificates must be conducted in accordance with IMO Res. A 1141(31) Survey Guidelines under the harmonized system of survey and certification (HSSC), 2019 as amended from time to time, s.5.6 Revalidation of certificates.

Schedule 1: Temporary in-service transfer process

standards implemented in Marine Orders 1 to 98 during the period of transfer and applying to the vessel, will be taken into account during the recertification process.

- (b) AMSA will assist the Defence representative regarding any requirement for re-registration or amendment to CSR.
- (c) The ODSwR on notification of the transfer date is required to update the Defence Vessel Register.

Schedule 1: Temporary in-service transfer process

3. Domestic Commercial Vessel transfer to Defence's regulatory jurisdiction

3.1. Transfer to Defence's regulatory jurisdiction

The vessel may retain National Law certificates and continue to undergo periodic survey during the period it is within Defence's regulatory jurisdiction, if it is likely in the future, to transfer again.

Alternately Defence may decide to suspend the certificates for a period of up to 18 months by making an application at:

<https://www.amsa.gov.au/forms/application-suspend-or-revoke-certificate-or-approval>

Applications will be considered by an AMSA delegate and if approved, written confirmation of the suspension will be sent to the applicant.

The vessel may also be subject to shipping registration requirements set out in the contractual arrangements for the charter of the vessel. The Shipping Registration Office should be contacted by the vessel owner or Defence to discuss requirements.

3.2. Return to Domestic Commercial Vessel certification

A National Law certificate will come into force automatically at the end of the nominated suspension period, providing it has not been suspended or revoked during the suspension period. It is a condition of the Certificate of Survey that all periodic surveys have been completed. It is recommended that periodic surveys are conducted according to the survey schedule throughout the suspension period.

To remove the suspension earlier, Defence may make an application by email to dcvapplications@amsa.gov.au, providing evidence that any due periodic surveys have been completed.

If the vessel's registration has been suspended, steps must be taken to re-register the vessel.

Schedule 1: Temporary in-service transfer process

4. Operating during the transfer period: Regulated Australian Vessels and Domestic Commercial Vessels

The vessel is to be operated according to terms of the agreement between the vessel owner and Defence, and any additional conditions or matters relating to compliance with the classification society's rules and regulations noted at the time of transfer.

Where agreed contractual arrangements between the vessel owner and Defence are in place, the RO, who provides assurance when the vessel is in AMSA's jurisdiction, will continue to provide classification services to the vessel during the transfer period.

During transfer to Defence regulatory jurisdiction, all reporting to AMSA continues as if the vessel were regulated by AMSA, regarding the issue of statutory certification. This includes reporting to the vessel owner (if obligated to do so under the terms of the agreement) and the AMSA appointed RO:

- (a) any incidents or damage to the vessel;
- (b) a change to the materiel status/ statutory certification baseline; and
- (c) health and safety or environmental incidents (where these may affect statutory certification issued under the Navigation Act or National Law).

Defence will conduct assurance checks to establish that the vessel is continuing to meet classification rules and regulations, as well as Defence policy requirements and conditions applied to the vessel during transfer.

If the vessel is required to be registered under the *Shipping Registration Act 1981*, including exempt classes, and is travelling outside Australia during the transfer period, the vessel must maintain registration to avoid the vessel owner being prosecuted under section 68 of that Act.

Where a vessel is operating under Defence Regulatory Jurisdiction, it will be removed from the Australian General Shipping Register and registered on the Defence Register, for the period it is operating under Defence Regulatory Jurisdiction. During this period the vessel will not be subject to the *Shipping Registration Act 1981*.