2016

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Seafarers Safety and Compensation
Levies Collection Bill 2016

No. , 2016

(Employment)

A Bill for an Act relating to the collection of levies imposed by the Seafarers Safety and Compensation Levies Act 2016, and for other purposes
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A Bill for an Act relating to the collection of levies imposed by the Seafarers Safety and Compensation Levies Act 2016, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Seafarers Safety and Compensation Levies Collection Act 2016.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with
Section 3

column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
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<td>1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
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<td>2. Sections 3 to 23 of the Seafarers Safety and Compensation Levies Act 2016 commences.</td>
<td>At the same time as section 3 of the Seafarers Safety and Compensation Levies Act 2016 commences.</td>
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

• This Act is about the collection of levy imposed by the Seafarers Safety and Compensation Levies Act 2016.

• Levy imposed on seafarer berths on the first day of a quarter is due for payment at the end of 14 days after the start of the quarter.

• Late payment penalty will be payable if levy remains unpaid after it becomes due for payment.

• An employer must give a quarterly return to the Commission.
• If levy relating to seafarer berths on a prescribed vessel remains unpaid after it becomes due for payment, the vessel may be detained by an authorised person.

• An authorised person may:
  (a) enter premises under warrant or with the consent of the occupier; and
  (b) search for documents and other things relating to berths on which levy is, or may be, payable.

• The Commonwealth must pay to Comcare amounts equal to amounts of seafarers cost recovery levy received by the Commonwealth. After Comcare receives such an amount from the Commonwealth, Comcare may distribute part of the amount to the Australian Maritime Safety Authority.

### 4 Definitions

In this Act:

authorised person means a person appointed as an authorised person under section 12.

Comcare means the body corporate established by section 68 of the Safety, Rehabilitation and Compensation Act 1988.

Commission means the Safety, Rehabilitation and Compensation Commission.

Note: The Commission is established by section 89A of the Safety, Rehabilitation and Compensation Act 1988.

employer means a person who employs one or more seafarers on a prescribed vessel.

identity card, in relation to an authorised person, means a card issued to the person under section 20.

late payment penalty means an amount payable under section 7.

levy means:
Section 5

(a) seafarers insurance levy; or
(b) seafarers cost recovery levy.

premises includes:
(a) a structure, building, vehicle or vessel; and
(b) a place (whether enclosed or built on or not); and
(c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

prescribed vessel has the same meaning as in the Seafarers Rehabilitation and Compensation Act 1992.

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

seafarer has the same meaning as in the Seafarers Rehabilitation and Compensation Act 1992.

seafarer berth has the same meaning as in the Seafarers Safety and Compensation Levies Act 2016.

seafarers cost recovery levy has the same meaning as in the Seafarers Safety and Compensation Levies Act 2016.

seafarers insurance levy has the same meaning as in the Seafarers Safety and Compensation Levies Act 2016.

5 Extent of Act

This Act extends to all places outside Australia, including the external Territories.

6 When levy is due for payment

If levy is imposed on seafarer berths on a prescribed vessel on the first day of a quarter, the levy is due for payment at the end of the period of 14 days after the start of the quarter.

Note: See also sections 25M and 25N of the Seafarers Rehabilitation and Compensation Act 1992 (exemptions).
7 Late payment penalty

Penalty

(1) If an amount of levy payable by a person remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount calculated at the rate of:
   (a) 20% per annum; or
   (b) if a lower rate per annum is specified in the regulations—that lower rate per annum;
   on the amount unpaid, computed from that time.

Power to remit

(2) The Commission may remit the whole or a part of an amount payable under subsection (1) if:
   (a) the Commission is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or
   (b) the Commission is satisfied:
       (i) that the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and
       (ii) having regard to the nature of the reasons that caused the delay, that it would be fair and reasonable to remit some or all of the amount; or
   (c) the Commission is satisfied that there are special circumstances that make it reasonable to remit some or all of the amount.

(3) The Commission may exercise the power conferred by subsection (2):
   (a) on written application being made to the Commission by a person; or
   (b) on the Commission’s own initiative.

Refusal

(4) If:
Section 8

(a) the Commission decides to refuse to remit the whole or a part of an amount payable under subsection (1); and
(b) the Commission made the decision in response to an application;
the Commission must give written notice of the decision to the applicant.

Review of decisions

(5) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Commission to refuse to remit, or to remit only part of, an amount payable under subsection (1).

8 Recovery of levy and late payment penalty

Scope

(1) This section applies to the following amounts:
(a) an amount of levy;
(b) an amount of late payment penalty.

Recovery

(2) The amount:
(a) is a debt due to the Commonwealth; and
(b) may be recovered by the Commonwealth by action in a court of competent jurisdiction.

9 Employers to give returns to the Commission

(1) If, on the first day of a quarter, the following conditions are satisfied in relation to one or more seafarer berths:
(a) the seafarer berths are on a particular prescribed vessel;
(b) the seafarer berths are normally used by seafarers who are employed by a particular employer;
the employer must:
(c) give the Commission a return, in the approved form, setting out:
(i) the number of those berths; and
(ii) such other information relating to those berths as is
specified in the form; and

(d) do so within 14 days after the start of the quarter.

(2) For the purposes of subsection (1), approved form means a form
approved, in writing, by the Chief Executive Officer of Comcare.

(3) Subsection (1) does not apply to a quarter that began before the
commencement of this section.

Offence

(4) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1);
    and

(b) the person omits to do an act; and

(c) the omission breaches the requirement.

Penalty: 5 penalty units.

(5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(6) Subsection (4) does not apply if the person has a reasonable
excuse.

Note: A defendant bears an evidential burden in relation to the matter in
subsection (6) (see subsection 13.3(3) of the Criminal Code).

Self-incrimination

(7) A person is not excused from giving a return on the ground that the
return might tend to incriminate the person or expose the person to
a penalty.

(8) However, in the case of an individual:

(a) the return; or

(b) giving the return; or

(c) any information, document or thing obtained as a direct or
   indirect consequence of giving the return;

is not admissible in evidence against the individual:
(d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of late payment penalty); or
(e) in criminal proceedings, other than proceedings for:
   (i) an offence against subsection (4) of this section; or
   (ii) an offence against section 137.1 or 137.2 of the *Criminal Code* in relation to the return.

### 10 Detention of vessel

If an amount of levy imposed on seafarer berths on a prescribed vessel remains unpaid after the levy becomes due for payment, the vessel may be detained by an authorised person until the amount is paid.

### 11 Levy taken to be levy in relation to a ship for certain purposes of the Admiralty Act

Levy is taken to be a levy in relation to a ship for the purposes of paragraph 4(3)(q) of the *Admiralty Act 1988*.

### 12 Appointment of authorised persons

The Chief Executive Officer of Comcare may, in writing, appoint:
   (a) the Deputy Chief Executive Officer of Comcare; or
   (b) a member of Comcare’s staff:
      (i) who is an SES employee or acting SES employee; or
      (ii) who is an APS employee who occupies, or performs the duties of, an Executive Level 1 or 2 position or an equivalent position;
   to be an authorised person for the purposes of a specified provision of this Act.

### 13 Access to premises and books

   (1) An authorised person may:
      (a) with the consent of the occupier of premises; or
      (b) in accordance with a section 19 warrant that relates to premises;
enter the premises for the purpose of exercising the powers of an authorised person under this section.

Powers of an authorised person

(2) The powers of an authorised person under this section are to:

(a) search for, examine, take extracts from, and make copies of,

a document; and

(b) search for, and examine, a thing;

relating to berths on which levy is, or may be, payable.

14 Consent of occupier

(1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 13(1)(a), an authorised person must inform the occupier that the occupier may refuse consent.

(2) A consent has no effect unless the consent is voluntary.

(3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.

(4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

(5) If an authorised person entered premises because of the consent of the occupier of the premises, the authorised person must leave the premises if the consent ceases to have effect.

(6) If:

(a) an authorised person enters premises because of the consent of the occupier of the premises; and

(b) the authorised person has not shown the occupier his or her identity card before entering the premises;

the authorised person must do so on, or as soon as is reasonably practicable after, entering the premises.
15 Announcement before entry under warrant

Before entering premises under a section 19 warrant, an authorised person must:

(a) announce that he or she is authorised to enter the premises;

and

(b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and

(c) give any person at the premises an opportunity to allow entry to the premises.

16 Authorised person to be in possession of warrant

An authorised person executing a section 19 warrant must be in possession of the warrant or a copy of the warrant.

17 Details of warrant etc. to be given to occupier

If:

(a) a section 19 warrant is being executed in relation to premises;

and

(b) the occupier of the premises, or another person who appears to represent the occupier, is present at the premises;

the authorised person must, as soon as practicable:

(c) make a copy of the warrant available to the occupier or other person; and

(d) inform the occupier or other person in writing of the rights of the occupier or other person under section 18.

18 Right to observe execution of warrant

(1) The occupier of premises to which a section 19 warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the section 19 warrant if the occupier or other person is present at the premises while the warrant is being executed.
(2) The right to observe the execution of the warrant ceases if the
occupier or other person impedes that execution.

(3) This section does not prevent the execution of the warrant in 2 or
more areas of the premises at the same time.

19 Warrants to enter premises

Application for warrant

(1) If an authorised person suspects on reasonable grounds that there is
on particular premises a book, document or thing relating to berths
on which levy is, or may be, payable, the person may apply to a
Magistrate for a warrant under this section.

Issue of warrant

(2) If the Magistrate is satisfied, by information on oath or affirmation,
that:

(a) there are reasonable grounds for believing that there is on the
premises a book, document or thing relating to berths on
which levy is, or may be, payable; and

(b) the issue of a warrant is reasonably necessary for the
purposes of this Act;

the Magistrate may issue a warrant authorising the applicant to
enter the premises with such assistance, and using such force, as is
necessary and reasonable for the purpose of exercising some or all
of the powers of an authorised person under subsection 13(2).

(3) The Magistrate must not issue a warrant unless:

(a) the informant or some other person has given to the
Magistrate, either orally or by affidavit, such further
information (if any) as the Magistrate requires concerning the
grounds on which the issue of the warrant is being sought; and

(b) the Magistrate is satisfied that there are reasonable grounds
for issuing the warrant.

(4) The warrant must state that the warrant is issued under this section.
Section 20

(5) There must be stated in the warrant:
   (a) the premises to which the warrant relates; and
   (b) the purpose for which the warrant is issued; and
   (c) the powers exercisable under subsection 13(2) by the
       authorised person to whom the warrant is issued; and
   (d) a day (not more than 7 days after the day of issue of the
       warrant) on which the warrant ceases to have effect; and
   (e) whether entry is authorised to be made at any time of the day
       or night, or during specified hours of the day or night; and
   (f) a description of the book, document or thing that the
       applicant suspects is on the premises.

20 Identity cards

(1) The Chief Executive Officer of Comcare may cause an identity
    card to be issued to an authorised person.

(2) An identity card must:
    (a) contain a recent photograph of the authorised person to
        whom it is issued; and
    (b) be in a form approved, in writing, by the Chief Executive
        Officer of Comcare.

Offence

(3) A person commits an offence if:
    (a) the person has been issued with an identity card; and
    (b) the person ceases to be an authorised person; and
    (c) the person does not, as soon as practicable after so ceasing,
        return the identity card to the Chief Executive Officer of
        Comcare.

   Penalty:  1 penalty unit.

(4) Subsection (3) is an offence of strict liability.

   Note: For strict liability, see section 6.1 of the Criminal Code.
Defence—card lost or destroyed

(5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the Criminal Code).

21 Delegation by the Chief Executive Officer of Comcare

(1) The Chief Executive Officer of Comcare may, in writing, delegate all or any of his or her functions and powers under this Act (other than section 12) to:
   (a) the Deputy Chief Executive Officer of Comcare; or
   (b) a member of Comcare’s staff:
      (i) who is an SES employee or acting SES employee; or
      (ii) who is an APS employee who occupies, or performs the duties of, an Executive Level 1 or 2 position or an equivalent position.

(2) A delegate is, in the exercise of a delegated power, subject to the directions of the Chief Executive Officer of Comcare.

22 Commonwealth payments to Comcare—seafarers cost recovery levy etc.

Payments to Comcare

(1) The Commonwealth must pay to Comcare amounts equal to:
   (a) amounts of seafarers cost recovery levy received by the Commonwealth; and
   (b) amounts of late payment penalty received by the Commonwealth in relation to unpaid seafarers cost recovery levy.

(2) If the whole or a part of an amount referred to in paragraph (1)(a) or (b) is refunded, Comcare must pay to the Commonwealth an amount equal to the refund.
Section 22

(3) The Minister may, on behalf of the Commonwealth, set off an amount payable by Comcare under subsection (2) against an amount that is payable to Comcare under subsection (1).

(4) The Consolidated Revenue Fund is appropriated for the purposes of making payments under subsection (1).

Distribution to the Australian Maritime Safety Authority

(5) After Comcare receives an amount under subsection (1) (the received amount), Comcare may pay to the Australian Maritime Safety Authority an amount equal to so much of the received amount as may reasonably be regarded as attributable to expenditure that was incurred:

(a) by the Australian Maritime Safety Authority; and

(b) in, or attributable to, the administration of the Work Health and Safety Act 2011, so far as that Act applies because of subsection 12(8A) of that Act.

(6) If:

(a) Comcare receives an amount under subsection (1) (the received amount) as a consequence of the receipt by the Commonwealth of an amount referred to in paragraph (1)(a) or (b); and

(b) the whole or a part of the amount referred to in paragraph (1)(a) or (b) is refunded; and

(c) Comcare has paid an amount to the Australian Maritime Safety Authority under subsection (5) (the distributed amount) as a consequence of the receipt by Comcare of the received amount;

then:

(d) if the whole of the amount referred to in paragraph (1)(a) or (b) is refunded—the Australian Maritime Safety Authority must pay to Comcare an amount equal to the distributed amount; or

(e) if a part of the amount referred to in paragraph (1)(a) or (b) is refunded—the Australian Maritime Safety Authority must pay to Comcare an amount equal to the relevant percentage of the distributed amount.
(7) For the purposes of paragraph (6)(e), the relevant percentage is the percentage of the amount referred to in paragraph (1)(a) or (b) that is attributable to the part of that amount.

(8) Comcare may set off an amount payable by the Australian Maritime Safety Authority under subsection (6) against an amount that is payable to the Australian Maritime Safety Authority under subsection (5).

23 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for:

(i) carrying out or giving effect to this Act; or

(ii) facilitating the collection or recovery of amounts of levy; or

(iii) facilitating the collection or recovery of amounts of late payment penalty.

(2) The matters that may be prescribed under subsection (1) include (but are not limited to):

(a) providing for the manner of payment of levy; and

(b) providing for the manner of payment of late payment penalty; and

(c) providing for the repayment of overpayments; and

(d) requiring employers to keep records relating to seafarer berths on prescribed vessels; and

(e) requiring employers to give information relating to seafarer berths on prescribed vessels to such persons as are prescribed; and

(f) penalties, not exceeding 10 penalty units, for offences against the regulations.