THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SEAFARERS SAFETY AND COMPENSATION LEVIES COLLECTION BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Senator the Hon. Michaelia Cash)
THE SEAFARERS SAFETY AND COMPENSATION LEVIES COLLECTION BILL 2016

OUTLINE

The Seafarers Safety and Compensation Levies Collection Bill 2016 (the Bill) provides for the procedures associated with the collection of the levies that will be imposed by the Seafarers Safety and Compensation Levies Bill 2016 (the Levies Bill).

The Bill requires employers of seafarers to lodge returns relating to the number of seafarer berths aboard a prescribed vessel and to make levy payments quarterly. If the levy is not paid, the Bill provides for a late payment penalty to become payable.

The Bill provides for an employer to give quarterly returns to the Safety Rehabilitation and Compensation Commission (the SRCC). It also provides for the appointment of authorised persons and the manner in which authorised persons may have access to premises and books for the purpose of examining matters relating to a seafarer’s berth on a prescribed ship on which a levy is, or may be, payable.

The Bill also establishes a standing appropriation of the Consolidated Revenue Fund, so that the Commonwealth can pay the funds raised by the cost recovery levy imposed by the Levies Bill to Comcare. Comcare will then pay a portion of this money to the Australian Maritime Safety Authority.


The Bills form part of a package of legislative reforms to modernise the Seacare scheme, aligning work health and safety with the model work health and safety laws and giving effect to recommendations in a review of workers compensation and making the scheme consistent with the government’s cost recovery guidelines.
FINANCIAL IMPACT STATEMENT

N/A
REGULATION IMPACT STATEMENT

This Bill forms part of a package of legislative reforms - see the regulatory impact statement for the Seafarers and Other Legislation Amendment Bill 2016, which addresses all Bills in the package.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS


Seafarers Safety and Compensation Levies Collection Bill 2016

The Seafarers Safety and Compensation Levies Collection Bill 2016 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

The Bill provides for the procedures associated with the collection of the levies that will be imposed by the Levies Bill.

The Bill provides for the appointment of authorised persons and the manner in which authorised persons may have access to premises and books for the purpose of examining matters relating to a seafarers berth on a prescribed ship on which a levy is, or may be, payable.

The Bills form part of a comprehensive package of legislative reforms to the Seacare scheme, a national work health and safety and workers’ compensation scheme for a very small proportion of the maritime industry.

Human rights implications

The Bill engages the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Right to privacy

Article 17 of the ICCPR provides that ‘no one shall be subjected to arbitrary or unlawful interference with [their] privacy, family, home or correspondence’. General Comment 16 by the Human Rights Committee elaborates on Article 17, stating that the ‘gathering and holding of personal information on computers, databanks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law’.

Both levies imposed by the Levies Bill are calculated on the basis of how many ‘seafarer berths’ there are on a vessel. Clause 13 of the Bill empowers an authorised person (who must be a senior employee of Comcare) to enter premises, either with a consent of the occupier or in accordance with a warrant, and while there to search for and examine documents and other things relating to berths on which the levies are, or may be, payable.

This entry power is not new—clause 13 replicates, in almost exact terms, section 12 of the current Seafarers Rehabilitation and Compensation Levy Collection Act 1992. The clause is also consistent with the Regulatory Powers (Standard Provisions) Act 2014, which provides a framework of standard regulatory powers exercised by agencies across the Commonwealth.

The entry power is expressly limited. The power can only be used for a purpose related to determining the number of berths on which levy is payable. Further, unless there is consent from the occupier, the power can only be used if the authorised person has obtained a warrant from a Magistrate. These restrictions ensure that the power cannot be used in an arbitrary manner and does not enable unlawful interferences with privacy. Further, any personal information gathered
from documents accessed using this power will be subject to the Privacy Act 1988, which establishes a comprehensive system for the protection of personal information.

These restrictions ensure that if the clause did limit the right to privacy, this would be in a manner that is reasonable and proportionate. Any such limitation would also be necessary to achieve the legitimate objective of accurately determining the amount of levy payable in relation to each vessel in the scheme. Ensuring that the levy payable accurately reflects the number of seafarers covered by the scheme is essential to the levies achieving their objectives. While the majority of operators and employers provide accurate information, it is important that Comcare has sufficient regulatory powers to investigate potential underpayment of the levies.

Conclusion

Clause 13, which provides for entry onto premises and provides for the copying of documents which may contain personal information, engages the right to privacy. However, because any interference with privacy will be neither arbitrary nor unlawful, the clause does not limit the right. Further, if the clause did limit the right, it would be in a manner than is reasonable and proportionate and necessary to achieve a legitimate objective.

As such, the Bill is compatible with human rights because it generally does not engage with human rights and, to the extent it could limit one human right, such limitation would be necessary to achieve the Bill’s legitimate objective and would be reasonable and proportionate to that legitimate objective.

Minister for Employment, Senator the Hon Michaelia Cash
NOTES ON CLAUSES

In these notes on clauses, the following abbreviations are used:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AAT</td>
<td>Administrative Appeals Tribunal</td>
</tr>
<tr>
<td>Bill</td>
<td>Seafarers Safety and Compensation Levies Collection Bill 2016</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>Levies Bill</td>
<td>Seafarers Safety and Compensation Levies Bill 2016</td>
</tr>
<tr>
<td>Levy Collection Act</td>
<td>Seafarers Rehabilitation and Compensation Levy Collection Act 1992</td>
</tr>
<tr>
<td>SES</td>
<td>Senior Executive Service of the Australia Public Service</td>
</tr>
<tr>
<td>SRCC</td>
<td>Safety, Rehabilitation and Compensation Commission</td>
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Clause 1 – Short title

1. Clause 1 provides for the short title of the Act to be the *Seafarers Safety and Compensation Levies Collection Act 2016*.

Clause 2 – Commencement

2. The table in this clause sets out when the provisions of the Bill commence.

3. Sections 1 and 2 commence on the day the Act receives the Royal Assent. The substantive provisions in sections 3 to 23 commence on the same day as clause 3 of the Levies Bill, that is, on the same day as Part 3 of Schedule 2 to the *Seafarers and Other Legislation Amendment Act 2016*. The commencement date is set down as 1 July 2017.

Clause 3 – Simplified outline of the Act

4. This clause contains a simplified outline of the Bill. The simplified outline is included in the Bill to assist readers to understand the substantive provisions of the Bill, but is not intended to be comprehensive. Readers should rely on the substantive provisions of the Bill.

Clause 4 – Definitions

5. This clause contains the principal definitions of terms used in the Bill. Importantly, it defines the term ‘levy’ to mean the seafarers insurance levy or the seafarers cost recovery levy imposed by the Levies Bill. Other definitions will be explained in the context of the provisions within which they appear.

Clause 5 – Extent of Act

This clause provides that the Bill will have extra-territorial operation.
Clause 6 – When levy is due for payment

6. This clause provides that the levies are due for payment 14 days after the start of the quarter when the levy is imposed on the seafarer berths on a prescribed vessel.

Clause 7 – Late payment penalty

7. This clause provides that, where an amount of the levies remains unpaid after becoming due for payment, a penalty calculated at 20% per annum (or a lower rate if specified in the regulations) becomes payable.

8. The SRCC can remit the penalty in certain circumstances specified in subclause 7(2), either on its own initiative or on application. A decision by the SRCC to refuse an application to remit, or to remit only part of, a penalty is reviewable by the AAT.

Clause 8 – Recovery of levy and late payment penalty

9. This clause provides that the levies and late payment penalty are debts due to, and recoverable by, the Commonwealth.

Clause 9 – Employers to give returns to the Commission

10. This clause provides that an employer must give the SRCC a return setting out the number of seafarer berths normally used by seafarers employed by that employer, with such other information specified in a form approved by Comcare, within 14 days of the start of the quarter (that is, returns will be due on the same day as payment is due—see clause 6).

11. Failure to lodge the form is a strict liability offence. This replicates an existing strict liability offence in section 7 of the Levy Collection Act. Maintaining a strict liability offence is considered justified for this provision because of the regulatory nature of the offence, the low penalty amount (5 penalty units) and the difficulty of proving a mental element for this type of offence. The use of strict liability is balanced by providing for a ‘reasonable excuse’ defence.

12. Subclause 9(7) overrides the privilege against self-incrimination when giving a return, but subclause 9(8) limits the admissibility of the return and any information, document or thing obtained as a direct or indirect consequence of giving the return in certain civil and criminal proceedings.

Clause 10 – Detention of vessel

13. This clause provides that where levy imposed on seafarer berths on a prescribed vessel remains unpaid after it becomes due for payment the vessel may be detained by a person authorised under the Bill (see clause 12) until the amount is paid.

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

14. This clause provides that the levies are a levy recoverable as a general maritime claim for the purposes of paragraph 4(3)(q) of the Admiralty Act 1988.
Clause 12 – Appointment of authorised persons

15. This clause provides for the CEO of Comcare to appoint the Deputy CEO of Comcare or a member of the Comcare staff at SES or Executive level 1 or 2 to be an authorised person. The appointment must be in writing and specify the relevant provision of the Act to which the authorisation relates.

Clause 13 – Access to premises and books

16. This clause provides that an authorised person may enter premises under warrant issued under clause 19 or with the consent of the occupier (see clause 14) and search for and examine documents and other things relating to berths on which levy is, or may be, payable.

17. ‘Premises’ is defined in clause 4 and specifically includes a vessel.

Clause 14 – Consent of occupier

18. This clause provides that the consent of the occupier for the purposes of clause 13 must be voluntary and may be withdrawn. An authorised person who enters premises with the consent of the occupier is required to show the occupier his or her identity card before, or as soon as is reasonably practicable after, entering the premises.

Clause 15 – Announcement before entry under warrant

19. This clause requires an authorised person entering premises under a warrant to announce that he or she is authorised to enter and show an identity card to the occupier of the premises.

Clause 16 – Authorised person to be in possession of warrant

20. This clause provides that an authorised person must have the warrant or a copy of the warrant when executing a warrant.

Clause 17 – Details of the warrant to be given to occupier

21. This clause requires the authorised person to give a copy of the warrant to the occupier or another person representing the occupier, when present, and inform that person in writing of the occupier’s rights (see clause 18) as soon as practicable.

Clause 18 – Right to observe the execution of the warrant

22. This clause provides that the occupier or other person representing the occupier, when present, is entitled to observe the execution of the warrant as long as the observation does not impede the execution of the warrant.

Clause 19 – Warrants to enter premises

23. This clause sets out the requirements for the application for, and issue by a magistrate of, a warrant to enter premises. The term ‘Magistrate’ is defined in the Acts Interpretation Act 1901.
Clause 20 – Identity cards

24. This clause provides that the CEO of Comcare may issue identity cards to authorised persons and specifies the form of, and the information that must be included on, an identity card.

25. It is an offence of strict liability for a person not to return to the CEO of Comcare an identity card when the person ceases to be an authorised person. This replicates an existing strict liability offence in section 14 of the Levies Collection Act. Maintaining a strict liability offence is considered justified because an authorised person under the Act will be a public official who can be presumed to be aware of their responsibilities in relation to their identity card. The use of a strict liability offence is balanced by a low penalty amount (1 penalty unit) and a ‘reasonable excuse’ defence.

Clause 21 – Delegation by the CEO of Comcare

26. This clause provides that the CEO of Comcare may delegate all or any of his or her functions (other than the ability to appoint authorised persons under clause 12) to the Deputy CEO, an SES or Executive level 1 or 2 member of the Comcare staff. The delegation must be in writing. The CEO of Comcare may issue directions to delegates.

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

27. This clause provides for the transfer of the money raised by the Seafarers Cost Recovery Levy to Comcare and AMSA.

28. Subclause 22(1) provides that the Commonwealth must pay the money raised by the levy to Comcare, including any late payment penalties.

29. Subclause 22(4) establishes a standing appropriation from the Consolidated Revenue Fund for the purposes of the Commonwealth paying the money raised by the levy to Comcare. A standing appropriation is considered justified in these circumstances because it will only relate to money raised by a levy for a specified purpose. The use of a standing appropriation in relation to a cost recovery levy is consistent with other cost recovery levies — see, for example, section 48 of the Australian Maritime Safety Authority Act 1990.

30. Subclause 22(5) empowers Comcare to transfer a portion of the money it receives to AMSA. This portion will be the amount which is attributable to AMSA’s expenditure in the administration of the WHS Act, as it applies to the Seacare scheme.

31. Subclauses 22(2), (3), (6), (7) and (8) deal with the situation of a portion of the levy being refunded. They provide for repayment by AMSA to Comcare, and Comcare to the Commonwealth. These repayments can be offset against other amounts.

Clause 23 – Regulations

32. This provision allows for the Governor-General to make regulations required or permitted under the Bill or necessary or convenient for carrying out or giving effect to the Bill or facilitating the collection of the levy or the late payment penalty.