

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Small and Family Business, the Workplace and Deregulation

Seafarers Rehabilitation and Compensation Levy Collection Act 1992

Seafarers Rehabilitation and Compensation Levy Collection Regulations 2018

The *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* (Levy Collection Act) provides for the administration of the levy imposed by the *Seafarers Rehabilitation and Compensation Levy Act 1992*. The levy provides the funding resources for the Seafarers Safety, Rehabilitation and Compensation Authority (the Authority) to meet the costs of its obligations under the *Seafarers Rehabilitation and Compensation Act 1992*.

Section 16 of the Levy Collection Act provides that the Governor-General may make regulations: required or permitted by the Levy Collection Act; or necessary or convenient to be prescribed for carrying out or giving effect to the Levy Collection Act; or for facilitating the collection or recovery of amounts of levy payable to the Commonwealth.

Section 6 of the Levy Collection Act requires scheme employers to provide a 'return' to the prescribed person, in a form approved by the Chief Executive of Comcare, which contains prescribed information. Section 8 of the Levy Collection Act provides that a levy payable on a seafarer berth may be recovered by the Commonwealth as a debt due to the Commonwealth.

The *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2018* (the Regulations) provide for matters associated with the collection of the levy. The Regulations replace the *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2002* (old regulations) prior to their automatic repeal (sunsetting) with the same effect. Minor modifications have been made to ensure fitness for purpose, consistency with the Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* and current drafting practices to simplify language and remove obsolete or unnecessary provisions. More specifically, the Regulations:

- prescribe the Authority as the levy collector;
- prescribe the manner of payment of the levy;
- provide for the giving of returns required under the Levy Collection Act;
- provide for the keeping of registers of information by employers who must pay the levy;
- provide for an employer to produce a register if requested by the Authority;
- provide for the Authority to collect the levy payable under the Levy Collection Act;
- provide for the refund of overpayments of a levy; and
- make transitional and savings arrangements.

The Regulations were developed in consultation with the Authority and the Commonwealth agency Comcare, which carries out administrative functions in relation to the collection of the levy and associated requirements. The Authority is a consultative body comprising members representing the employers and employees in the maritime industry as well as the Australian Maritime Safety Authority and Comcare. No objections to the Regulations were raised during consultation on the draft Regulations with the Authority and Comcare.

Details of the Regulations are set out in [Attachment A](#).

The commencement date of the Regulations is the same time as the commencement of the related *Seafarers Rehabilitation and Compensation Levy Regulations 2018*.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Office of Best Practice Regulation has assessed that remaking these instruments without substantial changes is not likely to have more than a minor and/or machinery regulatory impact on business, community organisations and individuals. As such, a RIS is not required (OPBR ID 23313).

ATTACHMENT A

Details of the *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2018*

This Attachment sets out further details of the *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2018* (the Regulations). All references to a section should be taken as a reference to a section of the Instrument unless otherwise stated.

PART 1 - Preliminary

Section 1 – Name of Regulations

This section provides that the title of the instrument is the *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2018*.

Section 2 – Commencement

This section provides for the whole of the Regulations to commence at the same time as the *Seafarers Rehabilitation and Compensation Levy Regulations 2018*. The provisions do not commence at all if that instrument does not commence.

Section 3 – Authority

This section provides that the instrument is made under the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* (Levy Collection Act).

Section 4 – Schedules

This section gives effect to the Schedule to the Regulations.

Section 5 – Definitions

This section defines terms used in the Regulations.

PART 2 – Records, returns and payment of levy

Section 6 – Giving of returns and other information

This section prescribes Seafarers Safety, Rehabilitation and Compensation Authority (the Authority) as levy collector for the purposes of section 6 of the Levy Collection Act. Offences relating to returns are provided for under section 7 of the Levy Collection Act. Unlike the former *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2002* (old regulations), the offence provisions relating to returns have not been replicated under these Regulations.

Section 7 – Manner of payment of levy

This section provides for the method of payment of the levy payable under the *Seafarers Rehabilitation and Compensation Levy Act 1992* (Levy Act) to the Authority.

Section 8 – Recovery of levy

This section clarifies the Authority may recover the levy payable under the Levy Act as a debt, on behalf of the Commonwealth.

Section 9 – Refund of overpayment of levy

This section requires the Authority to refund any overpayments of the levy payable under the Levy Act. Unlike the old regulations returning overpayments would no longer be discretionary, bringing the provision into line with whole-of-government policy on refunding overpaid levy amounts.

Section 10 – Records to be kept

This section prescribes a record-keeping requirement to ensure that levies are paid at the correct rates. The record-keeping requirements are equivalent to those under the old regulations. They require relevant employers to keep a register that records for the first day of each quarter:

- the name of each prescribed ship for which the employer employed or engaged seafarers; and
- the number of seafarer berths on each of those prescribed ships.

A record must be kept in the register for 5 years after the day on which the employer became liable to enter the record in the register.

Failing to comply is an offence punishable by a maximum penalty of five penalty units. The imposition of penalties is expressly authorised by the regulation-making power under paragraph 16(2)(f) of the Levy Collection Act. This allows for penalties, not exceeding 10 penalty units, for offences against the regulations. The strict liability element of this offence is addressed in the Human Rights Compatibility Statement.

Section 11 – Production of Records

Subsections 11(1) and (2) empower the Authority to require an employer to produce a copy of the register required to be kept under subsection 10(1). The Authority must provide the employer at least 14 days' notice to produce the records after the request is given. The notice period has increased from seven days under the old regulations to 14 days, in line with the Attorney-General Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Subsection 11(3) makes a failure to comply with subsections 11(1) and (2) an offence punishable by a maximum of five penalty units. The imposition of penalties is expressly authorised by the regulation-making power under paragraph 16(2)(f) of the Levy Collection Act.

Subsection 11(4) provides that records required under the section cannot be withheld by a person on the ground that giving the records, or the information contained in the records, might tend to incriminate the person or expose them to a penalty. To the extent this provision abrogates the privilege against self-incrimination, it is addressed in the Human Rights Compatibility Statement.

This provision is off-set by the use and derivative use immunities for individuals provided for in subsection 11(5). For an individual:

- information contained in the copy of the register;
- giving the copy of the register; or
- any information obtained as a direct or indirect consequence of the giving of the copy of the register,

is not admissible in evidence against that individual in criminal proceedings other than for a prescribed offence. The exceptions conform with the Attorney-General Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Unlike the old regulations, the Regulations no longer include a template warrant form, consistent with modern drafting practice.

PART 3 – Savings and Transitional Provisions

Section 12 - Definitions

This section defines terms for purposes of the savings and transitional provisions, including by defining ‘old regulations’ as the *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2002*, as in force immediately before the commencement day.

Section 13 – Savings – levy payable under old regulations

This section provides for the continued payment of outstanding levies payable under the old regulations, subject to the old arrangements for returns, method of payment and refunds.

For warrant processes under the Levy Collection Act, there is no longer any need to use a form. That is the case, regardless of whether the warrant relates to levies allegedly payable before or after commencement of the Regulations.

Section 14 – Transitional – registers and records

This section ensures that registers and records required to be kept under the old regulations must continue to be kept for the full prescribed period (i.e. five years), despite the repeal of the old regulations. For example, records already kept for three years under the old regulations at the time these Regulations commence, must be kept for a further two years (i.e. five years in total).

The Authority may require production of these documents under section 11 of the Regulations.

Section 15 – Transitional – copy of register requested under the old regulations

This section ensures that any request by the Authority for the production of documents under the old regulations continues to be enforceable under the Regulations.

SCHEDULE 1 – Repeals

This Schedule repeals the *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2002* in their entirety.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Seafarers Rehabilitation and Compensation Levy Collection Regulations 2018

This Legislative Instrument 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 of the Legislative Instrument

The *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* (Levy Collection Act) provides for the administration of the levy imposed by the *Seafarers Rehabilitation and Compensation Levy Act 1992* (Levy Act). The levy provides the funding resources for the Seafarers Safety, Rehabilitation and Compensation Authority (the Authority) to meet the costs of its obligations under the *Seafarers Rehabilitation and Compensation Act 1992*.

Section 16 of the Levy Collection Act provides that the Governor-General may make regulations: required or permitted by the Levy Collection Act; or necessary or convenient to be prescribed for carrying out; or giving effect to the Levy Collection Act or for facilitating the collection or recovery of amounts of levy payable to the Commonwealth.

The *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2018* (the Regulations) provide for matters associated with the collection of the levy. They replace the *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2002* (old regulations) prior to their automatic repeal (sunsetting) with the same effect. Minor modifications have been made to ensure fitness for purpose, consistency with the Attorney-General's Department's guidance and current drafting practices, to simplify language and remove obsolete or unnecessary provisions. The Regulations:

- prescribe the Authority as the levy collector;
- prescribe the manner of payment of the levy;
- provide for the giving of returns required under the Levy Collection Act;
- provide for the keeping of registers of information by employers who must pay the levy; and
- provide for an employer to produce its register if requested by the Authority;
- provide for the Authority to collect levy payable under the Levy Collection Act;
- provide for the refund of overpayments of a levy; and
- make transitional and savings arrangements.

Human rights implications

The Regulations are of an administrative or machinery nature, so mostly do not engage human rights except as follows.

The presumption of innocence

Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR) provides that '*everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law*'. Strict liability provisions will not violate the presumption of innocence so long as they are reasonable in the circumstances and maintain rights of defence.

Regulation 10 of the Regulations (Records to be kept) engages the presumption of innocence by creating an offence of strict liability, for those who fail to keep the prescribed register as required under the Regulations. The offence attracts a maximum criminal penalty of five penalty units.

The inclusion of a strict liability offence for record keeping is in line with the principles set out in Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide). This provision is likely to significantly enhance the effectiveness of the enforcement regime, as record keeping is essential to ensure that levies are paid by the prescribed employers at the correct rates. Strict liability ensures that the levy is collected on an equitable basis, which is a key objective of imposing mandatory levies. Given the industry-specific nature of this legislation and its narrow scope, duty holders may reasonably be expected to be aware of these long-standing requirements.

The maximum penalty for the offence is five penalty units, which is significantly less than the 60 penalty units generally considered appropriate for strict liability offences under the Guide. The offence is not punishable by imprisonment, and the defence of honest and reasonable mistake of fact remains an allowable defence, as per section 9.2 of the *Criminal Code*.

For these reasons the strict liability offence is not inconsistent with the presumption of innocence, as removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective.

Right to be free from self-incrimination

Article 14(3)(g) of the ICCPR protects the right of an individual to be free from self-incrimination in the determination of a criminal charge by providing that a person may not be compelled to testify against him or herself or confess guilt. The privilege against self-incrimination may be subject to permissible limits. Any limitations must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.

Subsection 11(4) of the Regulations operates to limit the right to be free from self-incrimination by expressly removing the privilege against self-incrimination in relation to the production of a register required to be kept under subsection 10(1). This is necessary to ensure the Authority can check the records (required to be kept by law) to verify whether duty holders have paid the levy as required under the Levy Act. To allow a claim of privilege in relation to such records would thwart the purpose of the legislation, since it would facilitate a failure to keep the records, or falsify them, with little fear of detection.

These limitations are reasonable and proportionate to achieving the objective, as subsection 11(5) of the Regulations provides that self-incriminatory disclosures cannot be used against the individual who made the disclosure either directly in criminal proceedings (use immunity) or indirectly to gather other evidence against the person (derivative use immunity). The only exceptions relate to proceedings arising out of sections 137.1 and 137.2 of the *Criminal Code* (in relation to false and misleading information and documents) and proceedings for an offence against these Regulations.

This limitation is permissible as protections apply to ensure the exercise of these powers is reasonable and proportionate to achieving the legitimate objective and adequate safeguards apply to prevent the risk of abuse or arbitrary exercise of discretion.

Conclusion

The Regulations are compatible with human rights.