

EXPLANATORY STATEMENT

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

Seafarers Rehabilitation and Compensation Levy Act 1992

Seafarers Rehabilitation and Compensation Levy Regulations 2018

The *Seafarers Rehabilitation and Compensation Levy Act 1992* (Levy Act) imposes a levy on Seacare scheme employers who employ or engage seafarers on a prescribed ship. The levy primarily funds a default insurance scheme for eligible employees where there is no employer against whom a workers' compensation claim can be made.

The levy is payable quarterly pursuant to the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992*. Corresponding regulations under that Act have been made for matters associated with the collection of the levy.

Sections 5 and 7 of the Levy Act provide for the rate of levy imposed on each seafarer berth to be prescribed by regulation. The *Seafarers Rehabilitation and Compensation Levy Regulations 2002* currently prescribe a quarterly levy rate of \$15 per seafarer berth for this purpose.

The *Seafarers Rehabilitation and Compensation Levy Regulations 2018* (the Regulations) repeal the current regulations and specify a new levy rate of \$25 per seafarer berth on prescribed ships.

Under the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act), the administration of levy funds and related functions are carried out by 'the Fund'. In 1993, the Minister approved the Australian Maritime Industry Compensation Agency Ltd (AMICA) to be the Fund. AMICA carried out the levy collection and related functions until 2002, when the Minister revoked the approval of AMICA as the Fund. The Minister made a declaration under section 100 of the Seafarers Act, making the Seafarers Safety, Rehabilitation and Compensation Authority (the Authority) responsible for the functions previously carried out by AMICA.

Subsection 7(2) of the Levy Act sets out pre-requisites for making the Regulations. In this context, the Authority carries out 'the Fund's' functions, so the Minister must consult the Authority on:

- the need to ensure that the [Authority] has adequate financial reserves for the purposes of its prudential management;
- reasonable estimates of the [Authority's] present and future liabilities under the Seafarers Act; and
- the cost of administering the Authority in connection with the performance or exercise of the ... functions, powers and obligations under that Act.

As required by subsection 7(2) of the Levy Act, the Minister has consulted with the Authority on the above matters.

The levy increase gives effect to a recommendation from the Seacare Authority to the Minister. The quantum of the increase reflects expert actuarial advice commissioned by the Authority. The actuarial advice identified several external risks which may impact on the viability of the scheme. The proposed increase in the levy rate to \$25 per seafarer berth would help mitigate this risk consistent with the expert actuarial advice and the objectives of the Levy Act.

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. The members of the Authority have also consulted their members regarding the proposed levy increase. No objections were raised after the draft Regulations were provided to the Authority and Comcare for comment.

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

The Regulations will commence at the beginning of the first quarter after this instrument is registered (that is on the first 1 July, 1 October, 1 January or 1 April).

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

The Office of Best Practice Regulation has advised a Regulation Impact Statement is not required (OPBR ID 23313).

Details of the Seafarers Rehabilitation and Compensation Levy Regulations 2018

Section 1 - Name

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

Section 2 - Commencement

This section provides that the Regulations commence on the first quarter following the day after the instrument is registered on the Federal Register of Legislation. In other words, in time for the next full levy collection period after the Regulations are registered.

Section 3 - Authority

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

Section 4 - Schedules

This section gives effect to the Schedule to this instrument.

Section 5 - Definitions

This section defines terms used in the Regulations.

Section 6 – Rate of Levy

This section provides that the rate of levy for the purposes of section 5 of the Levy Act is \$25.

Schedule 1 - Repeals

The Schedule repeals the old regulations, the *Seafarers Rehabilitation and Compensation Levy Regulations 2002*. Despite the repeals, any outstanding levy amounts under the old regulations will continue to be payable under savings and transitional arrangements.

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 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 Act 1992* (Levy Act) imposes a safety net levy on ‘Seacare scheme’ employers who employ or engage seafarers on a prescribed ship. 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* (Seafarers Act). These obligations include administering a default insurance scheme for eligible employees where there is no employer against whom a claim can be made, insurance premiums and administration costs.

Section 5 of the Levy Act provides that the rate of levy imposed on each seafarer berth is such amount as is prescribed. Section 6 provides that the levy is payable by an employer who employs or engages seafarers on a prescribed ship.

Subsection 7(1) of the Levy Act provides that the Governor-General may make regulations prescribing the rate of levy imposed by section 5 of the Act. The *Seafarers Rehabilitation and Compensation Levy Regulations 2002* currently prescribes a quarterly levy rate of \$15 per seafarer berth for this purpose.

The purpose of the *Seafarers Rehabilitation and Compensation Levy Regulations 2018* (the Regulations) is to specify a new, increased levy rate of \$25 per seafarer berth on prescribed ships.

The levy increase was recommended by the Authority to secure the integrity of the default insurance fund consistent with the objectives of the Levy Act. 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.

Human rights implications

The instrument engages the right to social security in Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). This provides that States Parties recognise the right of everyone to social security, including social insurance.

The proposed levy increase will help secure the integrity of the default insurance fund for workers’ compensation established under the legislation. It will ensure the administering body, the Authority, has adequate financial reserves for the purposes of its prudential management. Insofar as it enhances the integrity of the scheme, it can be said to promote the right to social security (ICESCR).

Conclusion

The Regulations are compatible with human rights.