

EXPLANATORY STATEMENT

Issued by the Authority of the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

Marine Navigation (Regulatory Functions) Levy Act 1991
Marine Navigation (Regulatory Functions) Levy Regulations 2018

Marine Navigation (Regulatory Functions) Levy Collection Act 1991
Marine Navigation (Regulatory Functions) Levy Collection Regulations 2018

OUTLINE

The *Marine Navigation (Regulatory Functions) Levy Regulations 1992* and the *Marine Navigation (Regulatory Functions) Levy Collection Regulations 1991* (together referred to as the Existing Regulations) are due to sunset on 1 October 2018, in accordance with subsection 50(2) of the *Legislation Act 2003*.

The *Marine Navigation (Regulatory Functions) Levy Regulations 2018* (the Levy Regulations) and the *Marine Navigation (Regulatory Functions) Levy Collection Regulations 2018* (the Levy Collection Regulations), together referred to as the Regulations, will repeal and remake the Existing Regulations without significant change.

The marine navigation (regulatory functions) levy (the levy) is a cost-recovery charge imposed on the international commercial shipping industry to recover costs of the Australian Maritime Safety Authority's (AMSA) Port State Control (PSC) inspection activities, including compliance inspections of ships and cargo, and maintaining information and legislation related to shipping requirements as well as general regulatory oversight. The levy is also used to deliver services consistent with Australia's obligations under international conventions such as the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and the Maritime Labour Convention (MLC).

Marine Navigation (Regulatory Functions) Levy Regulations 2018

The *Marine Navigation (Regulatory Functions) Levy Act 1991* (the Levy Act) prescribes the rates of the levy in relation to a ship, in effect creating default rates for the levy (subsection 7(2) refers). Subsection 8(1) of the Levy Act provides that the Governor-General may make regulations for the purposes of subsection 7(2) of the Act.

The Regulations will prescribe the same rates for the levy as those in the Existing Regulations, which are significantly higher than those in the Act. This will ensure that they remain commensurate with the expected cost to AMSA of its activities in relation to its PSC and related activities.

The levy rates will remain set at the following values:

- 17 cents per ton up to and including the first 5,000 tons of a ship's tonnage;
- 17.1 cents per ton for each ton more than 5,000 and up to and including 20,000;
- 17 cents per ton for each ton more than 20,000 and up to and including 50,000;
- 15.5 cents per ton for each ton up more than 50,000.

In effect, the same stakeholders will pay the same rates of levy in the same manner as is currently the case.

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

Marine Navigation (Regulatory Functions) Levy Collection Regulations 2018

The *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* (the Levy Collection Act) specifies the parties required to pay the levy imposed by the *Marine Navigation (Regulatory Functions) Levy Act 1991*, as well as the circumstances in which the levy is payable, to whom it may be paid, and the penalties for non-payment.

Subsection 11(1) of the Levy Collection Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Levy Collection Regulations is to continue to:

- provide refund and remission mechanisms and formulae for the levy;
- provide payment methods for the levy; and
- define key terms relating to the levy.

The Levy Collection Regulations make minor changes to the provisions in the Existing Regulations, which will simplify the language around the refund and remission mechanisms to ensure accessibility, and update the instrument in line with contemporary drafting practices.

Details of the Levy Collection Regulations are at [Attachment B](#).

Other matters

Limited consultation has been undertaken within government. The Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, as the rule maker responsible for these instruments under subsection 6(1) of the *Legislation Act 2003*, is satisfied that this level of consultation is appropriate for the purpose of subsection 17(1) of that Act. The Regulations will not involve significant changes, and will maintain accepted cost-recovery levels commensurate with AMSA's activity costs. The Existing Regulations have not been controversial or the subject of industry complaint.

The Regulations will both be legislative instruments for the purposes of the *Legislation Act 2003* (the Legislation Act). The Legislation Act specifies no conditions that need to be satisfied before the power to make the instruments may be exercised.

The Office of Best Practice Regulation has advised that no Regulation Impact Statement (RIS), regulatory costing or certification letter is required to remake the Regulations without significant change (OBPR Reference 23699 refers).

Statement of Compatibility with Human Rights

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

Marine Navigation (Regulatory Functions) Levy Regulations 2018 Marine Navigation (Regulatory Functions) Levy Collection Regulations 2018

These Disallowable Legislative Instruments are compatible with the human rights and freedoms recognised and declared in the international instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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The Regulations will prescribe the same rates for the marine navigation (regulatory functions) levy as those the Existing Regulations, which are significantly higher than those in the Act. This will ensure that they remain commensurate with the expected cost to AMSA of its PSC and related activities.

The levy rates will remain set at the following values:

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

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Subsection 11(1) of the Levy Collection Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Levy Collection Regulations is to continue to:

- provide refund and remission mechanisms and formulae for the levy;
- provide payment methods for the levy; and
- define key terms relating to the levy.

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Details of the Levy Collection Regulations are at [Attachment B](#).

Human rights implications

These Disallowable Legislative Instruments engage and promote the right to the enjoyment of just and favourable conditions of work, in particular, safe and healthy working conditions, under article 7(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Regulations may indirectly limit the right to work under article 6 of the ICESCR, as well as the right to freedom of movement under article 12 of the International Covenant on Civil and Political Rights (ICCPR), in certain circumstances.

The imposition of the marine navigation (regulatory functions) levy is not a new activity as the levy has been collected by AMSA for some time. Owners and masters of relevant sea-going ships are aware of the levy, and by paying the charge they are implicitly accepting their compliance with the levy. Penalty provisions relating to this levy, particularly the detention of ships, are intended to ensure timely payment of the levy.

Rights promoted by the Regulations

Article 7 (ICESCR): the right to the enjoyment of just and favourable conditions of work

Article 7(b) of the ICESCR provides that State Parties recognise the right to enjoyment of just and favourable conditions of work which ensure safe and healthy working conditions.

The Regulations engage and promote this right because they contribute to safe working conditions on and around ships. The Regulations stipulate the rates of a cost-recovery levy which funds AMSA's Port State Control (PSC) inspection activities, including compliance inspections of ships and cargo, and maintaining of information and legislation related to shipping requirements as well as general regulatory oversight. The levy is also used to deliver services consistent with Australia's obligations under international conventions such as the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and the Maritime Labour Convention (MLC).

The Regulations improve the safety of these ships, making conditions for those working aboard the ships safer. This levy directly funds inspections of ships to check qualifications, navigational equipment, and make sure on board safety related procedures are in place. Inspections also ensure ships are seaworthy and do not pose threats to ship or crew safety.

In this way, the Regulations promote the right to the enjoyment of just and favourable conditions of work, including safe and healthy working conditions by ensuring that the conditions aboard ships are in compliance with safety standards.

Rights potentially limited by the Regulations

Article 6 (ICESCR): the right to work

Article 6 provides that State Parties recognise the right to work, which includes the right of everyone to the opportunity to gain a living by work which they freely choose or accept, and will take appropriate steps to safeguard this right.

The Regulations may indirectly limit this right because they set the levy rates to be paid by certain sea-going ships. If the levy is not paid at these rates, subsection 9(1) of the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* provides that the ship may be detained until the levy is paid.

In circumstances where a ship is detained for non-payment of the levy, this detention may indirectly engage the right to work of the master of the ship and any seafarers on board the ship, if they were unable to work until the detention was lifted. This detention may also indirectly limit the right to work of the owner of a detained ship, because their ability to collect income may be limited until appropriate levy fees were paid and the detention was

lifted. However, seafarers working aboard a detained ship would typically be free to leave and to seek other employment at will.

Article 12 (ICCPR): the right to freedom of movement

Article 12 provides that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement.

The Regulations may indirectly engage this right in the same manner as Article 6 of the ICESCR, because they set the levy rates to be paid by certain sea-going ships and if the levy is not paid at these rates, subsection 9(1) of the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* provides that the ship may be detained until the levy is paid.

In circumstances where a ship is detained for non-payment of the levy, this detention may limit the right to freedom of movement for the master of the ship, as well as any seafarers if they were unable to leave the ship due to the nature of their work. However, seafarers working aboard a detained ship would typically be free to leave and to seek other employment at will.

Justification of potential limitations

The potential limitation on the right to work and the right to freedom of movement are permissible as they:

a) *pursue a legitimate objective*

The marine navigation (regulatory functions) levy directly funds AMSA's Port State Control (PSC) inspection activities, including compliance inspections of ships and cargo, maintaining information and legislation related to shipping requirements, and general regulatory oversight. The levy is also used to deliver services consistent with international obligations. Ensuring ships are seaworthy and do not pose threats to ship or crew safety, including checking qualifications, navigational equipment, and that on board safety procedures are in place, directly contributes to the safety of the shipping industry and makes conditions for those working aboard the ships safer.

If there were widespread non-payment or late payment of the levy, AMSA would no longer receive sufficient funds for these essential functions, potentially affecting its ability to provide, and the quality of, these services. This may result in poor safety outcomes for ships and seafarers, as well as Australia not fulfilling its obligations under international conventions.

The detention penalty for non-payment described in the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* supports these functions by allowing AMSA to ensure that all ships which are required to pay the levy do so in a timely manner.

Consequently, any limitation imposed by the detention penalty on the right to work and the right to freedom of movement is permissible because it pursues a legitimate objective.

b) *have a rational connection to this objective*

The marine navigation (regulatory functions) levy directly funds AMSA's Port State Control (PSC) inspection activities, including compliance inspections of ships and cargo, as well as the maintenance of standards and monitoring activities in accordance with international obligations. Timely payment of the levy is critical to ensure AMSA is sufficiently funded to perform these functions.

The detention penalty for non-payment described in the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991* deters non-payment and directly enforces the payment of this levy.

Consequently, any limitation imposed by the detention penalty on the right to work and the right to freedom of movement is permissible because it is rationally connected to a legitimate objective.

c) *are reasonable, necessary, and proportionate*

The levy rates to be paid to AMSA are commensurate with AMSA's expected service delivery costs, and are the same as those that were set by the *Marine Navigation (Regulatory Functions) Levy Regulations 1991*. These levy rates have been uncontroversial and accepted by industry and should not in practice prevent for seafarers from accessing work or from moving freely. The current levy rates have been uncontroversial and have not been the subject of industry complaints.

The detention penalty is a necessary deterrent and enforcement mechanism, and is the most reasonable way to ensure that ships comply with the levy. Ships are mobile, and if a ship were to leave Australian waters without having paid the levy it would be extremely difficult for Australian authorities to enforce payment.

Therefore, detention is the most appropriate enforcement mechanism for payment of the levy. Any limitation on the right to work and the right to freedom of movement is reasonable, and seafarers working on board a detained ship would typically be free to leave and seek other employment at will.

Consequently, any limitation imposed by the detention penalty on the right to work and the right to freedom of movement is permissible because it is reasonable, necessary, and proportionate.

Conclusion

These Disallowable Legislative Instruments are compatible with human rights as, to the extent that they limit human rights, those limitations are reasonable, necessary and proportionate, pursue a legitimate objective, and have a rational connection to this objective.

These instruments also promote human rights as they support the right to the enjoyment of just and favourable conditions of work, including the right to safe working conditions.

The Hon Michael McCormack MP
Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

NOTES ON CLAUSES

These notes explain clauses of the *Marine Navigation (Regulatory Functions) Levy Regulations 2018*.

For clarity, the *Marine Navigation (Regulatory Functions) Levy Regulations 2018* will be referred to as the Levy Regulations.

Section 1 - Name

This is a formal provision that specifies the title of this instrument is the *Marine Navigation (Regulatory Functions) Levy Regulations 2018*.

Section 2 - Commencement

This section provides that the Levy Regulations will commence on 1 October 2018, the date that the *Marine Navigation (Regulatory Functions) Levy Regulations 1992* (the Existing Regulations) are scheduled to sunset in accordance with subsection 50(2) of the *Legislation Act 2003*.

Section 3 - Authority

This section provides that the Levy Regulations will be made under the *Marine Navigation (Regulatory Functions) Levy Act 1991*.

Section 4 - Schedules

This section provides that each instruments specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 – Definitions

This section provides that in the Levy Regulations, ‘Act’ is defined as the *Marine Navigation (Regulatory Functions) Levy Act 1991*.

Section 6 – Levy rates

This section prescribes the levy rates at the following values:

- 17 cents per ton up to and including the first 5,000 tons of a ship’s tonnage;
- 17.1 cents per ton for each ton more than 5,000 and up to and including 20,000;
- 17 cents per ton for each ton more than 20,000 and up to and including 50,000;
- 15.5 cents per ton for each ton more than 50,000.

In effect, the same ships will continue to pay the same rates of levy in the same manner as is currently prescribed under the *Marine Navigation (Regulatory Functions) Levy Regulations 1992*.

Schedule 1 – Repeals

This Schedule provides for the repeal of the whole of the Existing Regulations. That is, the *Marine Navigation (Regulatory Functions) Levy Regulations 1992* will be repealed and replaced by these Levy Regulations.

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Section 4 - Schedules

This section provides that each instruments specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 – Definitions

This section notes that in the Levy Collection Regulations, several expressions and terms, including ‘*Australian port*’ and ‘*quarter*’ are defined in the Act.

This section also provides that in the Levy Collection Regulations, ‘*Act*’ is defined as the *Marine Navigation (Regulatory Functions) Levy Collection Act 1991*, and refers readers to where the term ‘*prevented from putting to sea*’ is defined within the Levy Collection Regulations.

Section 6 – Refund of levy

This section continues to provide the circumstances in which a Collector must refund an amount of the levy that has already been paid, and the formula for determining this amount.

For clarity and accessibility, the language around the refund mechanism for the levy has been simplified.

Section 7 – Remission of levy

This section continues to provide the circumstances in which a Collector must remit an amount of the levy to be paid, and the formula for determining this amount.

For clarity and accessibility, the language around the remittance of levy mechanism has been simplified.

Section 8 – Payment of levy

This section continues to provide that levy payment may be made by electronic funds transfer to a Collector. This continues to be intended as a facilitative provision, indicating how payment may, rather than must, be paid.

Section 9 – When a ship is prevented from putting to sea

This section provides that the term '*prevented from putting to sea*' is defined as a ship that is:

- wrecked, stranded or laid up for repairs; or
- prevented from putting to sea as a result of an industrial dispute; or
- moored in a harbour and not engaged in the ordinary employment of a merchant ship for hire or reward, including the loading and unloading of passengers or cargo.