

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 14 October 1992

(Parliamentary Secretary to the Minister for Employment, Education and Training)

A BILL

FOR

An Act to enact transitional provisions, and to repeal an Act and amend others, because of the enactment of the *Seafarers Rehabilitation and Compensation Act 1992*

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992*.

Commencement

2.(1) Subject to subsection (2), this Act commences on the day on which Part 2 of the *Seafarers Rehabilitation and Compensation Act 1992* commences.

(2) Subsection 15(2) commences on the day on which Part 2 of the *Seafarers Rehabilitation and Compensation Act 1992* commences, or on 1 January 1993, whichever is later. 5

Interpretation

3.(1) Unless the contrary intention appears, an expression used in this Act has the same meaning as in the *Seafarers Rehabilitation and Compensation Act 1992*. 10

(2) In this Act:

“commencing day” means the day on which Part 2 commences;

“Principal Act” means the *Seafarers Rehabilitation and Compensation Act 1992*; 15

“repealed Act” means the *Seamen’s Compensation Act 1911*.

PART 2—TRANSITIONAL PROVISIONS

Purpose of this Part

4. This Part deals with injuries etc. that happened before the commencing day. It converts rights under the repealed Act into corresponding rights under the Principal Act, subject to the limitations imposed by the repealed Act. 20

Application

5. This Part has effect despite anything contained in the Principal Act. 25

Application of Principal Act to pre-existing injuries etc.

6. Subject to this Part, the Principal Act applies in relation to an injury, loss or damage suffered by an employee, whether before or after the commencing day.

Entitlement to compensation 30

7.(1) A person is not entitled to compensation under the Principal Act in respect of an injury, loss or damage suffered before the commencing day if compensation was not payable in respect of that injury, loss or damage under the repealed Act.

(2) A person is not entitled to compensation under section 39 or 40 of the Principal Act in respect of a permanent impairment, or under section 29 of the Principal Act in respect of the death of an employee, being an impairment or death that occurred before the commencing 35

day, if the person received compensation of a lump sum in respect of that impairment or death under the repealed Act.

5 (3) The amount of compensation (if any) that a person is entitled to receive under section 39 or 40 of the Principal Act in respect of a permanent impairment, or under section 29 of the Principal Act in respect of the death of an employee, being an impairment or death that occurred before the commencing day, is the same as the amount of compensation that would have been payable to that person under the repealed Act, if the Principal Act had not been enacted.

10 (4) A person is not entitled to compensation under section 43 of the Principal Act in respect of any period that occurred before the commencing day.

15 (5) A person is not entitled to compensation under subsection 29(5) of the Principal Act in respect of the death of an employee, or under section 31, 33, 34, 35, 36, 37 or 45 of the Principal Act in respect of an incapacity, if the compensation relates to a period occurring before the commencing day and:

20 (a) the person received weekly payments of compensation in respect of that death or incapacity in relation to that period under the repealed Act; or

(b) the person was not entitled to receive weekly payments of compensation in respect of that death or incapacity in relation to that period under the repealed Act.

25 (6) The rate of compensation (if any) that a person is entitled to receive under subsection 29(5) of the Principal Act in respect of the death of an employee, or under section 31, 33, 34, 35, 36, 37 or 45 of the Principal Act in respect of an incapacity, if the compensation relates to a period occurring before the commencing day, is the same as the rate of compensation that would have been payable to that person in relation to that period under the repealed Act if the Principal Act had not been enacted.

30 (7) A person is not entitled to compensation under subsection 28(1) or (6) or section 30 of the Principal Act in respect of any cost or expenditure, if the liability to pay the cost arose before the commencing day, or the expenditure was incurred before that day, and:

35 (a) an amount was paid in respect of that cost or expenditure under the repealed Act; or

(b) an amount was not payable in respect of that cost or expenditure under the repealed Act.

40 (8) The amount of the compensation (if any) that is, because of this section, payable under subsection 28(1) or (6) or section 30 of the Principal Act in respect of any cost or expenditure, where the liability to pay the cost arose before the commencing day, or the expenditure

was incurred before that day, is the same as the amount that would have been payable in respect of that cost or expenditure under the repealed Act if the Principal Act had not been enacted.

(9) If proceedings for the recovery of compensation under the repealed Act in respect of an injury were not maintainable by a person because of section 6 of the repealed Act, that person is not entitled to compensation under the Principal Act in respect of that injury. 5

Payments under the repealed Act

8.(1) A payment made before the commencing day in respect of a liability of an employer under the repealed Act for an injury suffered by an employee is, on and after that day, taken to have been made by the employer in respect of the corresponding liability under the Principal Act. 10

(2) Without limiting the generality of subsection (1), any such payment that had effect as a redemption of a liability of an employer referred to in that subsection, has effect under section 44 of the Principal Act as a redemption of the corresponding liability. 15

Notices, claims etc. under the repealed Act

9.(1) A notice duly served before the commencing day under section 6 of the repealed Act has effect on and after the commencing day as a notice duly given to the employee's employer under section 62 of the Principal Act. 20

(2) A claim for compensation duly made before the commencing day under the repealed Act is taken to be a claim for compensation duly made to the employer under the Principal Act. 25

(3) If an employee was required to be examined by a medical referee or legally qualified medical practitioner for the purposes of the repealed Act but the examination had not been completed before the commencing day, the requirement continues to have effect as if it had been made by the employer under subsection 66(1) of the Principal Act and the medical referee or legally qualified medical practitioner were a medical practitioner nominated under that subsection. 30

(4) If an employee was receiving benefits under an award and compensation because of the application of paragraph 4 of Schedule 1 of the repealed Act, the benefits cease on the commencing day unless the employee makes an election within 30 days after the commencing day under section 61 of the Principal Act. 35

(5) An election made under subsection (4) is taken to have been made on the commencing day.

Settlements and determinations under the repealed Act

5 **10.(1)** A settlement (whether by agreement, arbitration or judicial decision) under the repealed Act and in force immediately before the commencing day, being a settlement of the liability of an employer to pay compensation or make any other payment under that Act in respect of an injury is, on and after that day, taken to be a determination made by the employer under the Principal Act in respect of the corresponding liability under the Principal Act, but Part 6 of the Principal Act does not apply in relation to that settlement.

10 **(2)** A decision or action by an employer in respect of the repealed Act and having effect immediately before the commencing day, being a decision or action in respect of the liability of an employer to pay compensation or make any other payment to a person under the repealed Act, is taken to be a determination made by the employer under the Principal Act in respect of the corresponding liability under the Principal Act.

15 **(3)** If a decision or action referred to in subsection (2) is, or has been, varied by a court, a committee of arbitration or an arbitrator, subsection (2) has effect in relation to that decision or action as so varied.

Employer may reconsider determination made under the repealed Act

25 **11.(1)** An employer may on the employer's own initiative, reconsider a decision in respect of the repealed Act having effect immediately before the commencing day and, for that purpose, section 79 of the Principal Act applies as if:

- (a) the person in respect of whom the decision was made were a claimant under the Principal Act; and
- (b) the decision were a determination by the employer within the meaning of Part 6 of the Principal Act.

30 **(2)** Part 6 of the Principal Act applies to a decision by the employer on a reconsideration of a decision mentioned in subsection (1) as if the decision were a reviewable decision by the employer within the meaning of that Part.

Liability under the repealed Act

35 **12.** A liability of an employer to pay compensation or make any other payment under any provision of the repealed Act, to the extent that it had not been discharged before the commencing day, is taken to have been incurred by the employer on that day under the corresponding provision of the Principal Act.

Employee to have right to bring action for damages against employer etc. in certain circumstances

13. Despite section 54 of the Principal Act, an employee has the right to bring, within 6 months after the commencing day, an action or other proceeding against his or her employer, or an employee of the employer, in respect of: 5

- (a) an injury sustained before the commencing day by the employee in the course of his or her employment, being an injury in respect of which the employer would, apart from this subsection, be liable (whether vicariously or otherwise) for damages; or 10
- (b) the loss of, or damage to, property used by an employee resulting from such an injury.

Money and investments held under the repealed Act

14. All money and investments held immediately before the commencing day for the benefit of a person or persons by a prescribed authority under the repealed Act are, by force of this section, vested in the Authority and are to be held by the Authority for the benefit of that person or those persons, as the case may be. 15

PART 3—CONSEQUENTIAL AMENDMENTS

Consequential amendments 20

15.(1) The Acts specified in Schedule 1 are amended as set out in that Schedule.

(2) The Act specified in Schedule 2 is amended as set out in that Schedule.

PART 4—REPEAL 25

Repeal of Act

16. The *Seamen's Compensation Act 1911* is repealed.

SCHEDULE 1

Subsection 15(1)

CONSEQUENTIAL AMENDMENTS

Commonwealth Employees' Rehabilitation and Compensation Act 1988

Paragraph 5(8)(d)

Omit "*Seamen's Compensation Act 1911*", substitute "*Seafarers Rehabilitation and Compensation Act 1992*".

Navigation Act 1912

Paragraph 127(1)(a):

Omit ", in the service of the ship".

Subsection 127(1):

Omit ", subject to subsection (4)".

Subsection 127(3):

Omit ", subject to subsection (4)".

Subsection 127(4):

Omit the subsection.

Paragraph 132(1)(a):

Omit the paragraph, substitute:
"(a) on the day of his or her recovery; or".

Paragraph 132(6)(d):

Omit the paragraph, substitute:
"(d) was not knowingly concealed by the seaman from the person who employed or engaged the seaman at the time the seaman was employed or engaged."

SCHEDULE 2

Subsection 15(2)

CONSEQUENTIAL AMENDMENT

Social Security Act 1991

Section 1069 (Family Payment Rate Calculator—paragraph 1069-D21(b)):

Omit the paragraph, substitute:

“(b) section 31, 33, 34, 35, 36, 37 or 45 of the *Seafarers Rehabilitation and Compensation Act 1992*”.

