

1992

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

INTERNATIONAL LABOUR ORGANISATION (COMPLIANCE WITH
CONVENTIONS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of
the Minister for Industrial Relations,
Senator the Hon Peter Cook)

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CONVENTIONS) BILL 1992

OUTLINE

This Bill proposes to create a regulation making power to prescribe procedures to be observed for the purposes of the Tripartite Consultation (International Labour Standards) Convention, 1976 adopted by the General Conference of the International Labour Organisation on 21 June 1976 and which was ratified by Australia on 11 June 1979.

This Bill also proposes amendments to the Navigation Act 1912 (the Navigation Act) and the Migration Act 1958 (the Migration Act).

The proposed amendment to the Migration Act would amend sections 71 to 75 and section 111 to enable Australia to demonstrate compliance with International Labour Organisation (ILO) Convention No. 108, Seafarers' Identity Documents, 1958. The amendment would give effect to the provisions of the Convention which deal with the production, to the appropriate authorities, of Seafarers' identity documents on arrival and departure of the seafarer from a country where the Convention is in force. At present Australia does not comply with the terms of the Convention because the provisions of the Migration Act require that seafarers identity documents be held by the master of the vessel, whereas the Convention requires that the identity documents remain in the possession of the seafarer.

The proposed amendment to sections 117 and 118 of the Navigation Act would enable Australia to demonstrate compliance with Article 5 of ILO Convention No. 68, Food and Catering (Ships' Crews), 1946. Compliance with this Article, which requires specific provisions relating to the provision of food and water to ships crews, is necessary to enable Australia to comply with Convention No. 147, Merchant Shipping (Minimum Standards), 1976.

Proposed new section 134 of the Navigation Act provides for regulations to be made which would enable the ratification of ILO Convention No. 73, Medical Examination (Seafarers), 1946. At present Australia does not comply with the terms of the Convention because some States and the Northern Territory do not have legislation giving effect to it. The amendment is intended to achieve compliance while preserving the jurisdiction of the States and the Northern Territory in respect of the matters covered by the Convention.

FINANCIAL IMPACT STATEMENT

The amendments proposed in the Bill are not expected to have significant financial impact.

NOTES ON CLAUSES

LONG TITLE

The long title of the Bill introduced into the Senate was amended during passage to reflect the fact that the Bill now includes provisions for giving effect to an international convention as well as amendments of the Migration Act 1958 and the Navigation Act 1912.

PART 1 - PRELIMINARY

Clause 1 - Short title

The short title of the Bill is specified.

Clause 2 - Commencement

Clause 2 provides for the commencement of the Bill on the day of Royal Assent.

PART 1A - REGULATIONS

The proposed subsections authorise the making of regulations to prescribe procedures to give effect to the Tripartite Consultation (International Labour Standards) Convention, 1976.

Clause 2A - Regulations.

Proposed clause 2A provides that the Governor-General may make regulations prescribing procedures to be observed for the purposes of the Tripartite Consultation (International Labour Standards) Convention, 1976 adopted by the General Conference of the International Labour Organisation on 21 June 1976.

PART 2 - AMENDMENTS OF THE MIGRATION ACT 1958

Clause 3 - Principal Act

This Clause defines the term Principal Act in this Part to mean the Migration Act 1958.

Clause 4 - Repeal of Sections 71, 72 and 73 and substitution of new sections.

This clause repeals sections 71, 72 and 73 of the Migration Act and substitutes new sections 71, 72 and 73.

The proposed new provisions would enable Australia to demonstrate compliance with International Labour Organisation Convention No. 108, Seafarers' Identity Documents, 1958.

Proposed section 71 relates to the production of identity documents and the mustering of crew on board a vessel arriving in or departing from Australia.

Proposed subsection 71(1) provides that the subsection applies to a vessel other than a vessel of the regular armed forces of a government recognised by the Commonwealth which has entered Australia.

Proposed subsection 71(2) provides that on the arrival of a vessel an "officer" may require the master of the vessel to muster the vessel's crew in the presence of the officer.

For the purposes of the Act "officer" means an officer of the Department of Immigration, Local Government and Ethnic Affairs, a Customs Officer, a Protective Services Officer, a member of the Australian Federal Police or a member of the police force of a State, an internal or external territory and an officer authorised by the Minister by notice published in the gazette.

Proposed subsection 71(3) provides that an officer may require the master of a vessel to muster the vessel's crew in the presence of the officer before the vessel departs from port.

Proposed subsection 71(4) provides that an officer may require that a member of the crew of a vessel produce his or her identity documents to the officer for inspection.

Proposed subsection 71(5) provides for a penalty of \$4,000 for failing, without reasonable excuse, to comply with a requirement of the section.

Proposed section 72 relates to the production of identity documents and the mustering of crew on board a resources installation arriving in or departing from Australian waters.

Proposed subsection 72(1) provides that the section applies to a resources installation that has been brought into Australian waters from a place outside the outer limits of Australian waters for the purpose of being attached to the Australian seabed.

Proposed subsection 72(2) provides that on the arrival of a resources installation an officer may require the person in charge to muster all the people aboard the installation in the presence of the officer.

Proposed subsection 72(3) provides that an officer may require the person in charge of a resources installation to muster all the persons on the installation in the presence of the officer before the installation is detached from the Australian seabed for the purpose of being taken to a place outside the outer limits of Australian waters.

Proposed subsection 72(4) provides that an officer may require that a person on board a resources installation that is attached to the Australian seabed or to another resources installation that is so attached to produce his or her identity documents to the officer for inspection.

Proposed subsection 72(5) provides for a penalty of \$4,000 for failing, without reasonable excuse, to comply with a requirement of the section.

Proposed section 73 relates to the production of identity documents and the mustering of crew on board a sea installation arriving in or departing from Australian waters.

Proposed subsection 73(1) provides that the section applies to a sea installation that has been brought into Australian waters from a place outside the outer limits of Australian waters for the purpose of being installed in an adjacent area or in a coastal area.

Proposed subsection 73(2) provides that on the arrival of a sea installation an officer may require the person in charge to muster all the people aboard the installation in the presence of the officer.

Proposed subsection 73(3) provides that an officer may require the person in charge of a sea installation to muster all the persons on the installation in the presence of the officer before the installation is detached from its location for the purpose of being taken to a place outside the outer limits of Australian waters.

Proposed subsection 73(4) provides that an officer may require that a person on board a sea installation that is attached to the Australian seabed or to another sea installation that is so attached to produce his or her identity documents to the officer for inspection.

Proposed subsection 73(5) provides for a penalty of \$4,000 for failing, without reasonable excuse, to comply with a requirement of the section.

CLAUSE 5 - MASTER TO REPORT ABSENCES

This clause amends the Principal Act by omitting paragraph (b) of section 74.

Paragraph 74(b) requires the master of a vessel to, on a demand of an officer, deliver the identity documents of crew member who is absent from the vessel at its time of departure. Under the proposed provisions the master would no longer retain possession of identity documents of seafarers and would be unable to deliver them to an officer if a crew member is absent. The provision would therefore be obsolete.

CLAUSE 6 - EXEMPTIONS

Clause 6 repeals section 75 of the Principal Act.

Section 75 empowers the Minister and the Secretary of the Department of Immigration Local Government and Ethnic Affairs to exempt a master from the requirements concerning the production of identity documents and the mustering of crew.

Existing provisions in the Act are non-discretionary, and the master of a vessel or person in charge of a resources installation or sea installation is required to produce seafarers identity documents on arrival and departure of the seafarer. The proposed provisions are discretionary and provide that an officer may require the master or person in charge to muster the crew on arrival or departure and may require the seafarers to produce their identity documents.

As the proposed sections 71 to 73 are discretionary there would be no need for the exemptions provided for in section 75.

CLAUSE 7 - PROOF OF CERTAIN MATTERS

This clause amends the Principal Act by omitting paragraph (1)(b) of section 111.

Paragraph 111(1)(b) deals with the circumstances under which seafarers identity documents, are evidence of the identity of a seafarer and of the seafarers membership of the crew of a vessel or resources or sea installation. The paragraph envisages that

the master of a vessel or a resources or sea installation has possession of the crew's identity documents.

Under the proposed amendments the master would not hold the identity documents of seafarers and therefore the existing provision would be obsolete.

PART 3 - AMENDMENTS TO THE NAVIGATION ACT

Clause 8 - Principal Act

This Clause defines the term Principal Act in this Part to mean the Navigation Act 1912.

Clause 9 - Repeal of Sections 117 and 118 and substitution of new sections.

The new sections will enable Australia to demonstrate compliance with Article 5 of International Labour Organisation Convention No. 68, Food and Catering (Ships' Crews), 1946.

Clause 9 provides for the repeal of sections 117 and 118 of the Principal Act and new sections 117 and 117A to be inserted.

Proposed section 117 provides that the master of a ship must not undertake a voyage unless the ship is carrying water of suitable quantity and quality and food of suitable quality, quantity, nutritive value and variety having regard to the nature and duration of the voyage and the size of the crew. This reflects the requirements of Article 5 of the Convention.

Proposed section 117A provides that the owner of a ship must not allow the ship to undertake a voyage unless the ship has catering facilities that are so arranged and equipped as to enable proper meals to be served to the crew.

Clause 10 - Insertion of new section 134 - Regulations to give effect to the Medical Examination (Seafarers) Convention, 1946 (No. 73)

The new section will permit regulations to be made giving effect to the International Labour Organisation Convention concerning the Medical Examination of Seafarers.

Proposed subsection 134 (1) defines the Convention and provides that the regulations may make provisions in relation to giving effect to the Convention.

Proposed subsection 134 (2) will permit the regulations to apply a provision of the Convention to classes of ships, or to ships engaged in classes of voyage in addition to those specified in the Convention. This will assist in achieving uniformity of regulation and in ensuring that the requirements of the Convention are applied to all ships to which, having regard to Australian conditions, it is appropriate they should be applied.

Under proposed subsection (3) regulations and orders made pursuant to proposed section 134 will not apply in relation to a ship referred to in subsection 2(1) of the Principal Act where the laws of a State or of the Northern Territory give effect to the Convention in relation to that ship. The following classes of ships or vessels are referred to in subsection 2(1): trading ships proceeding on voyages other than overseas or inter-state voyages; Australian fishing vessels proceeding on voyages other than overseas voyages; vessels proceeding on voyages other than overseas voyages; inland waterways vessels; and pleasure craft. Proposed subsection (3) will therefore preserve any existing State or Territory laws giving effect to the Convention in relation to such ships. Where new legislation giving effect to the Convention is enacted by the Northern Territory or the States in respect of ships coming within their jurisdiction, that legislation will apply to the exclusion of regulations and orders made under the proposed amendment.

