

ARTHUR ROBINSON & WEDDERWICKS  
LIBRARY

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

THE SENATE

INDUSTRIAL RELATIONS LEGISLATION  
AMENDMENT BILL (NO.3) 1991

EXPLANATORY MEMORANDUM

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





## INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL (No 3) 1991

### OUTLINE

This Bill proposes amendments to the Commonwealth Employees' Rehabilitation and Compensation Act 1988, ("the CERC Act"), the Industrial Chemicals (Notification and Assessment) Act 1989, ("the ICNAS Act"), the Long Service Leave (Commonwealth Employees) Act 1976, ("the LSL Act"), the Navigation Act 1912, ("the Navigation Act"), the Pipeline Authority Act 1973, ("the Pipeline Authority Act") and the Occupational Health and Safety (Commonwealth Employment) Act 1991 ("the OH&S Act").

The amendments to the CERC Act and the OH&S Act arise as a result of Government consideration of a comprehensive review of the operations of the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (Comcare).

The proposed amendments restructure the CERC Act to separate the regulatory and service functions currently performed by Comcare ("the previous Commission"). A restructured Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees ("the new Commission") will be established with responsibility for regulatory functions arising under the CERC Act. The commercial and service functions under the CERC Act are to be carried out by a new body corporate, to be called Comcare, constituted by a Chief Executive Officer ("CEO"). The CEO is to be an ex officio member of the new Commission.

The proposed amendments to the ICNAS Act will allow importers or manufacturers of the same new industrial chemical to make a joint application for an assessment certificate for the chemical. Currently, the Act requires separate applications to be made by each person wishing to manufacture or import a new chemical.

The proposed amendments of the LSL Act will enable regulations made under the Act to provide that certain categories of payments are not "salary" for the purposes of the Act and not therefore taken into account (or only taken into account to a specified extent) in calculating long service leave entitlements under the Act.

The amendments of the Navigation Act will enable regulations to be made to give effect to three International Labour Organisation Conventions which apply to sea-going ships or vessels. At present Australia does not comply with the Conventions because some States and the Northern Territory do

not have legislation giving effect to them. Australia has not ratified the Conventions, but they are regarded as appropriate for ratification once compliance with them has been achieved. The amendments are intended to achieve compliance while preserving the jurisdiction of the States and the Northern Territory to legislate in respect of the matters covered by the Conventions (medical examination of seafarers and accommodation for crews).

The proposed amendments to the Pipeline Authority Act are made to correct a drafting error made to that Act by amendments contained in the Industrial Relations Legislation Amendment Act 1991 (No.122 of 1991).

#### FINANCIAL IMPACT STATEMENT

The proposed amendments to the ICNAS Act may have minor financial implications. As a consequence of the proposed amendments, which allow for joint applications for assessments, only one fee for the assessment of a new chemical may be collected in circumstances which would currently attract two or more assessment fees.

The proposed amendments to other Acts contained in the Bill will have no significant financial implications.

## NOTES ON CLAUSES

## PART 1 - PRELIMINARY

Clause 1 - Short title

The short title of the Bill is specified.

Clause 2 - Commencement

This clause provides for the commencement of the clauses of the Bill.

Subclause 2(1) provides for the commencement of the Bill's clauses on the date of Royal Assent subject to other subclauses in clause 2.

Under subclause 2(2), subject to subclause 2(3), the amendments of the CERC Act commence upon a day fixed by Proclamation.

Subclause 2(3) provides that if the amendments to the CERC Act do not commence within 6 months of the Royal Assent for the Bill, the amendments commence on the first day after the expiry of the 6 month period.

Subclauses 2(4) and 2(5) provide that the amendments to the Navigation Act commence upon a day fixed by Proclamation or if not proclaimed within 6 months after the Bill receives Royal Assent then the amendments are repealed on the first day after the end of the 6 month period.

PART 2 - AMENDMENTS OF THE COMMONWEALTH EMPLOYEES'  
REHABILITATION AND COMPENSATION ACT 1988

## Division 1 - Introductory

Clause 3 - Principal Act

The clause defines the term Principal Act in this Part to mean the Commonwealth Employees' Rehabilitation and Compensation Act 1988.

Clause 4 - Definitions

The terms "commencing days", "new Commission", "OHS Act" and "previous Commission" are defined.

## Division 2 - Amendments of the Principal Act

### Clause 5 - Repeal and substitution of section 68 - Establishment

Division 1 of Part VII of the CERC Act deals with the establishment, functions, and powers of the previous Commission for the Safety Rehabilitation and Compensation of Commonwealth Employees. The Division is now to deal with the new body to be called Comcare. Accordingly, section 68 of the CERC Act is repealed and a new section 68 substituted. Proposed section 68 establishes the new Comcare.

### Clause 6 - Functions

Section 69 of the CERC Act is amended so that it sets out the functions of the new Comcare. References in the section to "the Commission" are, accordingly, proposed to be changed to refer to Comcare.

Paragraph 6(c) inserts in section 69 a new paragraph 69(da) which will confer, on Comcare, a new function of promoting the adoption, in Australia and elsewhere, of effective strategies and procedures for the rehabilitation of injured workers. This will, amongst other things, allow Comcare to promote broadly the approaches to compensation and rehabilitation embodied in the CERC Act.

Paragraph 69(f) is to be omitted as the role of liaising with administering authorities under the CERC Act is to reside with the new Commission and not Comcare. New paragraphs (f) and (fa) are also inserted so that Comcare will have the functions of liaison with rehabilitation authorities to ensure compliance with relevant guidelines and of advising the Minister about anything relating to Comcare's functions and powers.

### Clause 7 - Insertion of new s.72 A - Duty to assist Commission

The new Commission will not be a body corporate and is not intended to have staff of its own. In order to ensure that the executive and other aspects of its functions are effectively carried out, proposed s.72A will require Comcare to give the Commission the staffing and other support and assistance it requires to properly perform its functions and exercise its powers. Comcare staff providing that assistance are intended to do so in accordance with the wishes of the new Commission.

### Clause 8 - Insertion of new sections

This clause inserts new sections 73A and 73B.

### ***Proposed section 73A - Guidelines by Commission***

Under proposed subsection 73A(1), the Commission will be empowered to give the CEO certain policy guidelines concerning Comcare's powers or functions under the Principal Act or any other Act.

Under proposed subsection 73A(2) the Commission may issue to the principal officer of an administering authority written general policy guidelines in relation to functions and powers conferred on the administering authority.

Under proposed subsection 73A(3) the Commission is not to issue guidelines that are inconsistent with any Ministerial directions under section 73 of the Principal Act or section 12A of the Occupational Health and Safety (Commonwealth Employment) Act 1991.

Under proposed subsection 73A(4) guidelines that are inconsistent with directions under proposed subsection 73A(3) have no effect to the extent of the inconsistency.

Under proposed subsections 73A(5) and 73A (6) Comcare and an administering authority must comply with guidelines issued under proposed subsections 73A(1) and 73A(2) respectively.

### ***Proposed s.73B - Delegation by Comcare***

The proposed section will allow written delegations, by Comcare, to an officer or a person employed by the Commonwealth or a Commonwealth authority, of any of Comcare's functions and powers.

### **Clause 9 - Constitution of Comcare**

This clause will amend section 74 of the Principal Act by inserting a new subsection (1A) and replacing subsection (2).

Proposed subsection 74(1A) provides that Comcare is constituted by the CEO who is to be appointed by the Governor-General. Proposed subsection 74(2) makes provision in relation to Comcare's common seal.

### **Clause 10 - Repeal and substitution of Section 76 - The Chief Executive Officer**

This clause repeals section 76 of the Principal Act and substitutes a new section providing for the holding of office by the CEO.

The CEO may be appointed for a term not exceeding 5 years, is eligible for reappointment twice (proposed subsection 76(1))

is to be a full-time officer and is not to engage in other paid employment without Ministerial approval (proposed subsection 76(2)). The Minister may not give an approval unless satisfied that the additional employment will not interfere with the CEO's performance of duty (subsection 76(3)).

#### **Clause 11 - Termination of appointment**

This clause remakes section 84 of the CERC Act. The proposed new section 84 contains the usual provision for termination of the appointment of the CEO. The CEO's appointment may be terminated by the Governor-General for misbehaviour or physical or mental incapacity. It must be terminated if the CEO becomes bankrupt or insolvent, fails to disclose a relevant interest in relation to a matter under consideration by the new Commission, is absent from the required number of meetings of the Commission or from duty for specified periods or engages in paid external employment without Ministerial approval.

#### **Clause 12 - Insertion of New Division 3 - the Commission**

This clause inserts a new Division 3 into the CERC Act. The new Division establishes the new Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees and makes provision for its functions, powers, membership, meetings and operation.

##### ***Proposed section 89A - Establishment***

The new Commission is established.

##### ***Proposed section 89B - Functions***

Proposed section 89B gives the Commission, in addition to any other functions conferred upon it under the CERC Act, the function of maintaining contact with administering authorities under the CERC Act to ensure no inconsistency of administrative practices and procedures between Comcare and the authorities; advising the Minister about the operation of the CERC Act or the Commission's functions and powers; and any functions conferred on it by any other Act.

##### ***Proposed section 89C - Powers***

The Commission has the power to do anything relevant to the performance of its functions.

##### ***Proposed section 89D - Directions by Minister***

Proposed subsection 89D(1) gives the Minister a broad power of direction over the Commission. Proposed subsection 89D(2) requires the Commission to comply with any direction given by the Minister.



### ***Proposed section 89E - Constitution***

Proposed subsection 89E(1) sets out the composition of the new Commission. It is to consist of a chairperson, the CEO, two nominees of the Australian Council of Trade Unions, a representative of administering authorities under the CERC Act, a representative of the Commonwealth and other Commonwealth employing bodies, the Chief Executive Officer of the National Occupational Health and Safety Commission, or a member of the staff of that Commission and two members with relevant qualifications or experience.

The new Commission may operate notwithstanding vacancies in its membership (proposed subsection 89E(2)).

Proposed subsection 89E(3) defines a term used in proposed subsection 89E(1).

### ***Proposed s.89F - appointment***

Members of the new Commission are to be appointed by the Governor-General. The member representing administering authorities is to be nominated by the Minister after the Minister has consulted the administering authorities.

### ***Proposed section 89G - Term of Office***

Proposed subsection 89G provides that a member of the Commission holds part-time office for the period, not more than three years, specified in his or her instrument of appointment and is eligible for reappointment.

### ***Proposed section 89H - Deputies of Members***

Proposed subsection 89H(1) allows a member (other than the chairperson), with Ministerial approval, to appoint a person to be the member's deputy. A person may not be appointed to be the deputy of the member in relation to the National Occupational Health and Safety Commission unless the person is a prescribed staff member of that Commission (proposed subsection 89H(2)). Under proposed subsection 89H(3), an appointment of a deputy of a member may be revoked by the member and the revocation is effective when written notice of it is given to the Minister.

Proposed subsection 89H(4) allows the deputy of a member to attend a meeting in the place of the member.

A deputy of a member may resign by signed notice delivered to the member (proposed subsection 89H(5)).

Proposed subsection 89H(6) provides for the validity of anything by or in relation to a deputy notwithstanding certain procedural or other defects, irregularities or circumstances.

***Proposed section 89J - Acting Chairperson***

The Commission is to be able to operate, notwithstanding a vacancy in the office of chairperson, or the inability of the chairperson, by reason of absence or otherwise, to perform duty by proposed subsection 89J. The proposed section allows the Minister to appoint a person to act as chairperson and provides for the validity of certain acts done by or in relation to an acting chairperson notwithstanding certain procedural or other defects, irregularities or circumstances.

***Proposed section 89K - Remuneration and Allowances***

Proposed subsection 89K(1) provides that members of the Commission are to be paid the remuneration determined by the Remuneration Tribunal, or in default of any such Determination, such remuneration as is prescribed. Under proposed subsection 89K(2), a deputy of a member is to be paid a fee for attendance at any meeting attended by the deputy as is determined by the Remuneration Tribunal or, in default of any such Determination, such fee as is prescribed. Members and deputies are to be paid such allowances as are prescribed (proposed subsection 89K(3)). Proposed subsection 89K is, by subsection 89K(4), to operate subject to the Remuneration Tribunal Act 1973.

***Proposed section 89L - Leave of Absence***

A member may be granted leave of absence from a meeting or meetings of the Commission by, and on conditions set by, the Minister.

***Proposed section 89M - Disclosure of Interests***

Proposed subsection 89M provides for the disclosure by members of any direct or indirect pecuniary interest in matters considered by the Commission, the recording of disclosures, for any member who has made a disclosure in relation to a matter not to be present or to take part in a deliberation or decision of the Commission with respect to the matter, unless the Minister or the Commission otherwise determines (proposed subsections 89M(1) and (2)). A member of the Commission who has made a disclosure is not to be present at or to take part in any proceeding of the Commission with respect to the question whether the member may be present during a proceeding of the Commission on a matter to which the disclosure relates. (Proposed subsection 89M(3)). Proposed subsection 89M(4) defines the term "member" for the purposes of this section.

***Proposed section 89N - Resignation***

A member may resign by notice in writing delivered to the Governor-General.

### ***Proposed section 89P - Termination of appointment***

Proposed subsection 89P(1) allows the Governor-General to terminate a member's appointment for misbehaviour or physical or mental incapacity. The Governor-General must terminate the appointment of a member in the circumstances specified in proposed subsection 89P(2).

### ***Proposed section 89Q - Meetings***

The Commission is to determine when and where it is to meet (proposed subsection 89Q(1)).

Meetings may be convened by the Chairperson and must be convened where a written request signed by at least 4 members is made (proposed subsection 89Q(2)). The Commission must meet 3 times in each year (proposed subsection 89Q(3)).

The section also provides for the quorum at meetings of the Commission, the determination of questions by majority voting, arrangements for the conduct of meetings, including the member to preside and the manner of voting by the presiding member, and the determination by the Commission of the procedure at its meetings. By proposed subsection 89Q(11), "member" in the section is to include the CEO.

### ***Proposed section 89R - Delegation by Commission***

Proposed section 89R empowers the Commission in writing to delegate to the CEO or any member of the Commission, its functions and powers or any of them.

### ***Proposed section 89S - Annual Reports***

Proposed section 89S requires that the Chairperson as soon as possible after 30 June in each year, give to the Minister an annual report for the year ending on that date. Such a report is to include specified particulars and is to be presented to Parliament.

### **Clause 13 - Review by Commission**

Section 96D of the CERC Act provides for review by the Commission of estimates of premiums under the Act. The clause amends section 96 so that the new Commission, if it has reviewed an estimate, must confirm, or vary and confirm as varied, the estimate.

### **Clause 14 - Review by Minister**

Section 96F of the CERC Act allows objections to estimates of premiums to be made to the Minister. The Minister may confirm or vary an estimate where an objection to it is made.

Paragraph 14(a) of the Bill makes an amendment to subsection 96F(1) of the CERC Act that is consequential upon the repeal of section 96E of the Act by Part 2 of Schedule 1 to the Bill.

Paragraph 14(c) adds a new subsection (4) to section 96F. The proposed subsection requires the Minister, having reviewed an estimate of a premium to confirm, or vary and confirm as varied, the estimate.

#### Clause 15 - Insertion of new section 96FA - Confirmation of estimates

This clause inserts a new section 96FA. Proposed subsection 96FA(1) provides for deemed confirmation of an estimate not subject to review under section 96D. Under proposed subsection 96FA(2), a confirmation of an estimate by the Commission does not take effect if the Minister is required to review the estimate.

Proposed subsection 96FA(3) provides for the taking effect of a confirmation by the Commission of an estimate not required to be reviewed by the Minister. A confirmation by the Minister of an estimate takes effect on the day of confirmation (proposed subsection 96FA(4)).

#### Clause 16 - Payment of Premium

Section 96G of the CERC Act makes provision for approval by the Minister, and payment, of premiums.

Paragraph 16 (a), (b) and (d) of the Bill omit subsection 96G(1) and make consequential amendments to remove the provision for approval of estimates by the Minister and substitute references to confirmation of estimates.

Paragraph 16(c) makes a drafting amendment to subsection 96G(2) of the CERC Act.

Paragraph 16(e) omits and substitutes paragraph 96G(2)(c) of the CERC Act. The proposed paragraph requires payment of premiums in accordance with Comcare's directions.

Paragraphs 16(f) and (g) make consequential amendments.

#### Clause 17 - Variation of Estimate

Section 96H of the CERC Act allows variation of estimates in certain limited circumstances. The power to vary estimates is to reside with the new Commission but no amendment to the section is required to give effect to this, as it already refers to "the Commission". The amendments made to section 96H by clause 17 of the Bill are consequential on the scheme embodied in other provisions of the Bill.

### **Clause 18 - Other Amendments**

Subclause 18(1) and Schedule 1 make the amendments to the Principal Act specified in the Schedule. The amendments are mainly consequential on the scheme given effect by the Bill. Part 1 of Schedule 1 substitutes references to "Comcare" for references to "the Commission" in numerous provisions of the CERC Act.

Part 2 of Schedule 1 makes the other formal and consequential amendments required.

Subclause 18(2) and Schedule 2 amend the OHS Act consequential upon the establishment of the new Commission and of Comcare. In the main, the functions of the previous Commission under the OHS Act are to be undertaken by the new Commission. To reflect the fact that the new Commission will not be a body corporate and will not have staff of its own, relevant references to the Commission in sections 40, 41 and 77 of the OHS Act are changed to references to Comcare.

Other amendments made by Part 2 of the Schedule are as follows. New definitions of "annual report of Comcare", "annual report of the Commission", "Comcare" and "member" are inserted in subsection 5(1) of the OHS Act. A new subsection 5(3A) is also inserted into the Act to reflect the position of the CEO.

A new section 12A is inserted into the OHS Act. The proposed section reflects the fact that some functions under the OHS Act are given to Comcare, rather than the new Commission, and empowers the Minister to give Comcare directions as to the performance of those functions and the exercise by it of relevant powers. Further formal and consequential amendments are also made.

### **Division 3 - Transitional Provisions**

#### **Clause 19 - Transitional Provisions - assets, rights and liabilities**

Clause 19 puts Comcare in the place of the previous Commission with respect to its money, property, rights and entitlements. Comcare is also to be entitled to take the benefit of certain things done by the previous Commission. Anything done by the previous Commission, including a payment made, in respect of compensation liability, is taken to have been done after the commencement of Part 2 of the Bill by Comcare. Where the previous Commission has made a payment by way of a redemption of liability, the payment will have effect after the commencement as a redemption of any corresponding liability of Comcare.

**Clause 20 - Transitional Provisions - documents etc**

Subclause 20(1) of the Bill provides that certain documents, instruments and acts in writing in force or done immediately before the commencement of the amendments in relation to the previous Commission has effect after that time as if in force or done in relation to Comcare. Under subclause 20(2), certain documents, instruments and things done in writing involving or done by the previous Commission immediately before the commencement of the amendments has effect after that commencement as if involving or done by Comcare.

The approved guide and any guidelines under section 41 of the CERC Act, as in force immediately before the commencement of the amendments continue to be in force (subclauses 20(3) and (4)).

**Clause 21 - Transitional Provisions - determinations etc**

This clause provides that a determination, requirement or direction by or of the previous Commission before the commencement of the amendments is to be treated after that time as being by or of Comcare. Such a determination may be reconsidered or reviewed by Comcare.

**Clause 22 - Transitional provisions, proceedings, agreements etc**

Subclause 22(1) provides that in any proceedings started but not completed at the commencement of the amendments, Comcare steps into the place of the previous Commission.

References in legal documents of any kind to the previous Commission are to be read as references to Comcare (subclause 22(2)).

**Clause 23 - Transitional provisions - premiums**

Clause 23 ensures that anything done under the CERC Act relating to premiums, that if done under the CERC Act as proposed to be amended by the Bill would be done by, to or in relation to Comcare, is to be treated after the commencement of the amendments of the CERC Act as if done by, to or in relation to Comcare.

**Clause 24 - Other transitional provisions relating to amendments of Principal Act**

Under subclause 24(1) a member of staff of the previous Commission immediately before the commencement of the amendment of the CERC Act after that commencement is a member of the staff of Comcare.

Subclause 24(2) requires Comcare, in its first annual report, to report on the operation of the CERC Act for the whole of the year commencing on 1 July 1991.

#### Clause 25 - Other transitional provisions relating to amendments of the OH&S Act

This clause ensures that any acts or things done under the OH&S Act before the commencement of the amendments of that Act made by the Bill, that if done after that commencement could be done by or in relation to Comcare or the new Commission as the case may be, are to be treated as if done or in relation to Comcare and the new Commission respectively. The clause covers documents, notices or requests given or made to the previous Commission (subclauses (1) and (2)) or by the previous Commission (subclause (3)), appointments of investigators (subclause (4)), inquiries (subclause (5)) and proceedings (subclause (6)). References to the previous Commission in documents, instruments, judgments or orders are to be taken to be references to Comcare (subclause 25(7)).

Subclause 25(8) requires the new Commission, in its first annual report, to report on the operation of the OH&S Act for the whole of the year commencing on 1 July 1991.

#### Clause 26 - Regulations

Clause 26 allows regulations to be made to make such other transitional provisions as may be necessary or convenient. Subclause 26(2) is a form of "Henry VIII" clause in that it allows such regulations to modify the operation of any other of the transitional provisions in the Bill. The transitional provisions in the Bill are necessarily complex. The subclause allows the demands of that complexity to be met, providing a mechanism to avoid any unforeseen difficulty or injustice. Regulations are, by the provisions of the Acts Interpretation Act 1901, subject to scrutiny and possible disallowance by Parliament.

### PART 3 - AMENDMENTS TO THE INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) ACT 1989

#### Clause 27 - Principal Act

The clause defines the term Principal Act in this Part to mean the Industrial Chemicals (Notification and Assessment) Act 1989.

#### Clause 28 - Interpretation

This clause amends the definition of "new synthetic polymer" in section 5 of the ICNAS Act.

It inserts the words "each representing at least 2% by weight," after "components" in the definition to make it more scientifically accurate.

#### Clause 29 - Application of Assessment Certificate

Section 23 of the ICNAS Act is amended by the insertion of a new subsection (1A) to allow for a joint application by 2 or more persons for an assessment certificate in relation to a new industrial chemical. The "persons" must be manufacturers or importers of new industrial chemicals.

#### Clause 30 - Permits allowing introduction before assessment

Section 30 of the ICNAS Act is amended by inserting a new subsection (1A) as a consequence of allowing a joint application to be made for an assessment certificate in relation to a new industrial chemical. Section 30 allows the Minister to grant an applicant a permit authorising importation or manufacture of a chemical before the issuing of an assessment certificate. Because of the possibility of a joint application this section is being amended to allow the Minister to grant a permit to any one or more of the applicants in a joint application.

#### Clause 31 - Giving of Assessment Certificates

This clause amends section 39 of the ICNAS Act by inserting a new subclause (2) to provide for each applicant to a joint application to be given a separate certificate by the Director within 7 days after the provisions of subsection 38 (5)(a) of the ICNAS Act are met.

#### Clause 32 - Applications for assessment of priority existing chemicals

Section 55 of the ICNAS Act is amended by the insertion of a new (1A) to allow 2 or more persons to make a joint application for assessment in relation to a "priority existing chemical" - which means an industrial chemical for which there is a declaration in force under section 51 or 52 of the Act.

#### Clause 33 - Introducer to notify Director of certain matters

This clause inserts a new subsection (4) in section 64 of the ICNAS Act to allow joint applicants, upon whom obligations are imposed under this section, to jointly notify the Director of any of the circumstances detailed in the section.



**Clause 34 - Exempt information about chemicals subject to secondary notification**

Section 66 of the ICNAS Act is being amended by the insertion of a new (2) allowing 2 or more persons to make a joint application that some or all of the information given in the notification be treated as exempt information under section 75 of the ICNAS Act. This is a consequence of allowing a joint application to be made for an assessment of a new industrial chemical.

**PART 4 - AMENDMENTS TO THE LONG SERVICE LEAVE  
(COMMONWEALTH EMPLOYEES) ACT 1976**

**Clause 35 - Principal Act**

This clause defines the term Principal Act in this Part to mean the Long Service Leave (Commonwealth Employees) Act 1976.

**Clause 36 - insertion of new section 8A - Certain payments not included in salary**

This clause introduces a new section 8A into the LSL Act to allow certain regulations to be made.

Proposed paragraph 8(a) provides that the regulations made under the LSL Act may provide that payments of a specified kind are not included in "salary" for the purposes of the LSL Act.

Proposed paragraph 8A(b) provides that the regulations may specify the extent to which payments in certain categories are not included in "salary" for the purposes of the LSL Act.

Paragraph 8A(c) enables the regulations to prescribe the circumstances in which payments of a specified kind are not included in "salary" for the purposes of the LSL Act

**PART 5 - AMENDMENTS OF THE NAVIGATION ACT 1912**

**Clause 37 - Principal Act**

The Principal Act is defined as the Navigation Act 1912.

**Clause 38 - Insertion of new section 134 - Regulations to give effect to the Medical Examination (Seafarers) Convention 1946**

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.

The purpose of proposed subsection (3) is to enable regulations for the purpose of giving effect to the Convention to be made in respect of sea-going ships and vessels proceeding on intra-state voyages. Under section 2 the Act does not apply to such ships and vessels unless the application of section 2 is expressly excluded by a provision of the Act.

Under proposed subsection 134(4) 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; 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 Conventions 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.

#### Clause 39 - Regulations relating to accommodation

Clause 39 inserts new subsections 136(2), (3), (4) and (5) into the Principal Act.

Proposed subsection (2) will permit regulations to be made giving effect to two Conventions of the International Labour Organisation concerning accommodation for ship's crews: Accommodation of Crews Convention (Revised) 1949 and Accommodation of Crews (Supplementary Provisions) Convention 1970.

Proposed subsection (3) makes similar provision in respect of the two Conventions to that made by proposed subsection 134(2) in respect of the Convention concerning the medical examination of seafarers (see above).

Proposed subsection (4) makes similar provision in respect of the two Conventions to that made by proposed subsection 134(3) in respect of the Convention concerning the medical examination of seafarers (see above).

Proposed subsection (5) makes similar provision in respect of the two Conventions to that made by subsection 134(3) in respect of the Convention concerning the medical examination of seafarers (see above).

## PART 6 - AMENDMENTS TO THE PIPELINE AUTHORITY ACT 1973

### Clause 40 - Principal Act

This clause defines the term Principal Act in this Part to mean the Pipeline Authority Act 1973.

### Clause 41 - Leave of Absence

This clause amends section 8 of the Pipeline Authority Act, which concerns leave of absence for members of the Pipeline Authority (the Authority), by omitting subsection 8(2) and substituting new subsections 8(2) and (3).

The clause corrects the amendment made to the Pipeline Authority Act by the Industrial Relations Legislation Amendment Act 1991 (No.122 of 1991). The amendment gave the Minister the power to grant leave of absence from meetings for part-time members of the Authority. It was not the intention that the Minister have this function as it would not be practical. It was intended that the Authority have this power and the amendment gives the power to the Authority.

Proposed subsection 8(2) enables the Minister to grant a full-time member of the Authority leave of absence other than recreation leave and closely accords with the present paragraph 8(2)(a).

Proposed subsection 8(3) enables the Authority to grant to a part-time member leave to be absent from a meeting or meetings of the Authority.

### Clause 42 - Termination of Appointment

This clause amends section 9 of the Principal Act by omitting the words "granted by the Authority" from paragraph (3)(b) and substituting the words "of absence" to make it clear that the exception for leave in paragraph (3)(b) refers to leave of absence.



D

)

•

)



D

)

1

)

