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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STEVEDORING INDUSTRY LEGISLATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

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



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OUTLINE

This Bill proposes amendments to the Stevedoring Industry Finance Committee Act 1977 and Stevedoring Industry Levy Collection Act 1977. It is introduced in conjunction with the Stevedoring Industry Levy Amendment Bill 1990. The Bills give effect to the Government's program for waterfront reform.

Present stevedoring industry employment arrangements are based on the 1977 General Agreement between the 1977 Waterside Workers Federation (WWF), the Association of Employers of Waterside Labour (AEWL) and other employer parties. These arrangements are underpinned by the Stevedoring Industry Levy Act 1977 (the Levy Act), the Stevedoring Industry Levy Collection Act (the Levy Collection Act), and the Stevedoring Industry Finance Committee Act, 1977.

The Levy Act imposes certain levies on employers of waterside labour. The Levy Collection Act provides for the collection of those levies and for related administrative arrangements. The Stevedoring Industry Finance Committee Act 1977:

- . establishes the Stevedoring Industry Finance Committee;
- . provides for payment to the Committee of the amounts of levies imposed and collected under the other Acts; and
- . allows the Committee to make certain payments in respect of waterside workers, including payments to the AEWL or to individual employers to reimburse amounts paid to satisfy certain award obligations.

An "In-Principle Agreement" for reform and restructuring of the Stevedoring Industry has been negotiated between the Government, the stevedoring employers, waterfront unions and the ACTU. The reform process will involve new employment arrangements and a rejuvenation of the workforce concerned through a one-off early retirement/redundancy package for older employees. The amendments proposed in the Bills update the legislation to enable it to underpin the reform process.

Amendments to the Stevedoring Industry Finance Committee Act 1977.

Amendments are proposed to enable the Stevedoring Industry Finance Committee to make payments to employers in respect of the provision by them of prescribed benefits to employees on the waterfront who are identified as eligible for early retirement in accordance with the In-Principle Agreement. Amendments are also proposed to expand the membership of the Committee by including a nominee of the Waterfront Industry Reform Authority and an officer of the Department of Industrial Relations. This is intended to facilitate the reform process.

Amendments to the Stevedoring Industry Levy Collection Act
1977.

Amendments are proposed to the Stevedoring Industry Levy Collection Act 1977 to allow cargoes taken to certain offshore installations to be treated as local rather than as overseas cargo. In addition, the definition of waterside worker is amended so that it is no longer dependent on the General Agreement of 1977. The penalties for non-compliance with reporting procedures and non-payment of the levies imposed are proposed to be increased to reflect current levels of penalties in Commonwealth legislation.

FINANCIAL IMPACT STATEMENT

Due to the nature of the legislative scheme concerned, there is neither an adverse nor positive impact on the Commonwealth due to these amendments although some cost-recovery by the Commonwealth will be facilitated.

NOTES ON CLAUSES

Part 1 - PreliminaryClause 1 - Short Title

The short title of the Act is given.

Part 2 - Amendments of the Stevedoring Industry Finance Committee Act 1977Clause 2 - Principle Act

This clause defines the term "Principal Act" in the Part to mean the Stevedoring Industry Finance Committee Act 1977 (the Act)

Clause 3 - Interpretation

This clause amends section 3 of the Act by adding new definitions for bodies and instruments involved in the waterfront reform process.

"Reform Agreement" is defined as the Waterfront Industry Reform "In-Principle" Agreement negotiated between the Commonwealth, the Australian Council of Trade Unions, the stevedoring industry employers and the relevant unions representing workers in the industry.

"ACTU" is defined to mean the Australian Council of Trade Unions.

"Authority" is defined to mean the Waterfront Industry Reform Authority which is referred to in the Reform Agreement. The Authority was established on 29 May 1989 under executive authority. The functions of the Authority are set out in clause 4.2 of the Reform Agreement.

"approved bank" is given an expanded definition to mean any bank within the meaning of section 5 of the Banking Act or another bank or financial institution approved by the Treasurer. This will expand the range of possible sources of borrowings available to the Committee.

"Fund" is defined as the Stevedoring Industry Employees' Retirement Fund referred to in the Trust Deed establishing the waterfront superannuation scheme which was made on October 6 1967 between the Association of Employers of Waterside Labour and 5 trustees representing trade unions on the waterfront.

Clause 4 - Constitution of Committee

This clause alters the composition of the Stevedoring Industry Finance Committee (the Committee) as set out in section 5(1)(a) of the Act by including an officer of the Department of Industrial Relations and a person nominated by the Waterfront Industry Reform Authority.

Clause 5 - Functions of the Committee

This clause amends section 6 of the Act by providing a new function for the Committee. That function is to advise the Minister when a levy should cease to be imposed on an employer in respect of the employment of waterside workers at a particular port because new employment arrangements have been satisfactorily entered into that port.

The Minister may then determine when the general levy imposed under the Stevedoring Industry Levy Act shall cease to apply in that port.

Clause 6 - New heading to Part III

This clause deletes the words "in respect to waterside workers" contained in the heading to Part III of the Act so as to be consistent with the expanded range of employees who may receive payments from the Committee under the Reform Agreement.

Clause 7 - Payments to employers in respect of satisfaction of award obligations.

This clause amends section 8 of the Act by omitting subsections (1) and (4) of that section and substituting new subsections (1), (1A), 1(B) and (4).

Proposed subsection (1) provides for payments to the Association of Employers of Waterside Labour to reimburse it for expenditure incurred in discharging relevant award obligations.

Proposed subsection (1A) provides for payments to the Association for an employer, or directly to an employer, for expenditure incurred by the employer in discharging relevant award obligations.

Proposed subsection (1B) will allow for the cessation of payments in respect of Division B waterside workers when new employment arrangements for those workers are introduced and the imposition of levy in respect of their employment ceases. Proposed subsection (4) defines the terms "finishing date" and "relevant award obligations".

Subclause 8(2) ensures that the arrangements in place before the amendments made by this clause commence operation will continue to apply to expenditure incurred before that time.

Clause 8 - Repeal of Section 8A

This clause repeals section 8A of the Act which dealt with repayments of amounts borrowed by the Committee from the Australian Industry Development Corporation. Those loans have been repaid and the section is redundant.

Clause 9 - Other Payments

This clause repeals and replaces section 12 of the Act. Proposed subsection 12(1) allows certain payments to be made by the Committee to the Association of Employers of Waterside Labour or to the employers of waterside workers or eligible persons, as the case requires, in respect of the provision of prescribed benefits to waterside workers or eligible employees. Proposed subsection (2) defines the terms "eligible employee" and "eligible person".

Clause 10 - Application of moneys of the Committee

By operation of this clause, section 18 of the Act is amended to give power to the Committee to reimburse the Commonwealth for any expenditure it incurs in administering the levy arrangements, including the collection of levy from stevedoring industry employers and the making of payments to the Committee.

Clause 11 - Contracts

Under this clause, section 19 of the Act is amended to increase the limit on amounts involved in contracts to which the Committee may enter without the Minister's approval, from \$20,000 to \$100,000.

Clause 12 - Audit

This clause amends subsection 22(7) of the Act to increase the penalty for failing to comply with the requirements of subsection 22(6) from \$200 to \$1000. Subsection 22(6) requires a person, at the request of the Auditor-General, to furnish information necessary to enable the Auditor-General to carry out functions under the Act.

Clause 13 - Deputies

By operation of this clause, subsection 23(1) of the Act is amended to allow the appointment of deputies for the new members of the Stevedoring Industry Finance Committee provided for under clause 4.

The clause also amends subsection 23(4) of the Act to provide that the Minister may only appoint a deputy for the member of the Committee nominated by the Waterfront Industry Reform Authority on the nomination of that Authority.

Clause 14 - Meetings of the Committee

This clause amends section 26 of the Act to increase the quorum required for meetings of the Committee from 5 to 7. This amendment is consequential upon the increase in the membership of the Committee.

Clause 15 - Minor Amendments

This clause make a number of minor amendments to the Act as set out in Schedule 1 of the Bill. The amendments remove gender specific language.

Part 3 - Amendments of the Stevedoring Industry Levy Collection Act 1977

Clause 16 - Principal Act

This clause defines the term "Principal Act" in this Part of the Bill to mean the Stevedoring Industry Levy Collection Act 1977 (the Act).

Clause 17 - Interpretation

This clause amends the definitions of certain terms necessary for the interpretation of the Act.

All references to a "participating party" are redundant since they refer to parties participating in the General Agreement of 1977 which has been superseded by the Reform Agreement. As a consequence it is proposed to delete the definition of "participating party" in subsection 3(1) of the Act and references to "participating party" in other definitions such as "Division B waterside worker" and "waterside worker".

The definition of 'local cargo' is amended to include cargo consigned both to 'off-shore industry fixed structures' and 'offshore industry mobile structures' in order apply to consigned to oil rigs and other offshore installations.

The definitions of these new terms are contained in the new Schedule to the Act provided for in clause 22 and are derived substantially from the Navigation Act 1912.

Clause 18 - Penalty for non-payment

This clause alters the penalty contained in section 7 of the Act for non-payment of levy. The penalty which is expressed as a percentage of the amount of levy owing, is raised from 10 per cent to 20 per cent.

Clause 19 - Offences relating to returns

This clause increases the penalty for failing to comply with section 9 of the Act from \$300 to \$1500. Section 9 makes it an offence to fail to provide, or to provide false or misleading, information or returns required under the Act.

Clause 20 - Access to premises, books, etc

Under this clause the penalty provided under section 10 of the Act is raised from \$200 to \$1000. Section 10 makes it an offence to hinder or obstruct a person from entering premises as authorised, and for the purposes set out, in that section.

Clause 21 - Regulations

This clause raises from \$200 to \$1000 the maximum permissible penalty that may be prescribed for a breach of regulations made by the Governor-General under the power conferred by section 11 of the Act.

Clause 22 - New Schedule

The clause adds a new schedule which provides definitions necessary for the interpretation of the Act in its operation to off-shore industry fixed structures, off-shore industry mobile units and the Australian Coastal sea.

These amendments are derived from those inserted in the Navigation Act 1912 by the Navigation Amendment Act 1979.

Clause 23 - Minor amendments

Under this clause gender specific references in the Act are removed as provided for in Schedule 3 of the Bill.

Schedule 2 - Interpretation for Additional Operation of the Act.

The definitions of local cargo given in Clause 17 of the Bill are designed to cover cargo bound for oil installations in waters off the coast of Australia.

"Australian Coastal Sea" is defined for the purposes of its use in the definitions of "off-shore industry fixed structure" and "off-shore industry mobile unit". It is proposed to mean the territorial sea and any area of sea to landward of the territorial sea not within the limits of a State or Territory.

"Natural resources" is another definition required for the definition of "off-shore industry fixed structure" and "off-shore industry mobile unit". It means mineral and other non-living resources of the seabed and its subsoil, thus effectively excluding the fishing industry.

"Off-shore industry fixed structure" is defined so as to cover fixed drilling rigs, production platforms, pipelines and other structures fixed to the seabed, not able to be moved as a whole from one place to another and used or intended for use in connection with exploration or exploitation of the natural resources of Australia's continental shelf, or the seabed of the coastal sea or its subsoil.

"Off-shore industry mobile unit" is defined to cover vessels or other structures capable of mobility used or intended for use in connection with exploration or exploitation of the natural resources of Australia's continental shelf, or the seabed of the coastal sea or its subsoil. It would cover mobile drilling rigs of all types (i.e. ship-shape, jack-up, semi-submersible, etc) and other large mineral recovery vessels, together with large barges used in the industry such as derrick barges, dumb fixed barges and pipe-laying barges.

It would cover vessels used in the initial storage and processing of oil prior to its on-shipment. It would further cover vessels engaged wholly or primarily such activities as in rig supply or servicing, seismic or hydrographic survey.

