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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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SEAFARERS REHABILITATION AND COMPENSATION (TRANSITIONAL
PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon. Bob Collins)



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SEAFARERS REHABILITATION AND COMPENSATION (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1992

GENERAL OUTLINE

This Bill provides the transitional arrangements from the Seamen's Compensation Act 1911 to the proposed Seafarers Rehabilitation and Compensation Act 1992. It makes provision for seafarers who are injured prior to the commencement of the Seafarers Rehabilitation and Compensation Act 1992 and for the dependants of seafarers who are killed before the commencement of that Act.

The Bill also effects consequential amendments to the Navigation Act 1912, the Commonwealth Employees' Rehabilitation and Compensation Act 1988 and the Social Security Act 1991. The consequential amendments to the Navigation Act 1912 are necessary to harmonise similar provisions, while the consequential amendments to the other Acts are necessary to ensure reference is made to the proposed Seafarers Rehabilitation and Compensation Act.

FINANCIAL IMPACT STATEMENT

This Bill does not have a significant financial impact.

The transitional provisions that increase an entitlement or create an entitlement on and after the commencing day to a person with a pre-existing injury are:

- . the provision that applies weekly incapacity benefits at the new rates; and
- . the provision that creates an entitlement for compensation for household and attendant care services.

The financial impact of the increased weekly benefits will be negligible except for long term incapacities because the Seamen's Compensation Act 1911 provides for compensation benefits to be supplemented by payments under awards.

The current maritime awards have provisions that supplement weekly incapacity benefits for periods of up to one or two years (depending on the award) to levels similar to those that will be provided under the proposed Seafarers Rehabilitation and Compensation Act 1992.

The compensation costs for household and attendant care services required by persons who were injured before the commencing day are not expected to have a significant financial impact.

The transitional provisions relating to lump sum benefits (permanent impairment benefits, death benefits and funeral benefits) will have no financial impact. These provisions only require those benefits to be paid at the rate which applied when the liability arose. Accordingly, any benefit paid on or after the commencing day in respect of a liability arising before the commencing day will be at the rate prescribed under the Seamen's Compensation Act 1911.

PART 1 - PRELIMINARY

Clause 1: Short title

This clause provides that the proposed Act may be cited as the Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992.

Clause 2: Commencement

Subject to subclause 2(2), subclause 2(1) provides for the date of commencement of the Bill to be the day on which Part 2 of the proposed Seafarers Rehabilitation and Compensation Act 1992 commences.

Subclause 2(2) provides that the date of commencement for subclause 15(2) is to be the day on which Part 2 of the proposed Seafarers Rehabilitation and Compensation Act 1992 commences, or on 1 January 1993, whichever is later.

Clause 3: Interpretation

This clause provides that the expressions in this Bill have the same meaning as the expressions in the proposed Seafarers Rehabilitation and Compensation Act 1992, unless the contrary intention appears.

Important terms defined in this clause are:

"commencing day" which is defined to mean the day on which Part 2 commences.

"Principal Act" which is defined to mean the proposed Seafarers Rehabilitation and Compensation Act 1992.

"repealed Act" which is defined to mean the Seamen's Compensation Act 1911.

PART 2 - TRANSITIONAL PROVISIONS

Clause 4: Purpose of this Part

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

Clause 5: Application

This clause provides that this Part has effect despite anything contained in the proposed Principal Act.

Clause 6: Application of Principal Act to pre-existing injuries etc.

This clause provides that, subject to this Part, the proposed Principal Act will apply in relation to an injury, loss or damage suffered by an employee before or after the commencing day.

Clause 7: Entitlement to compensation

Subclause 7(1) provides that a person will not be entitled to compensation under the proposed Principal Act for an injury, loss or damage suffered before the commencing day if compensation was not payable under the repealed Act at the time the injury, loss or damage occurred.

Subclause 7(2) provides that a person will not be entitled to compensation under the proposed Principal Act for a permanent impairment occurring before the commencing day, or the death of an employee occurring before the commencing day, if the person had received a lump sum in respect of that impairment or death under the repealed Act, or if the person was not entitled to compensation for that impairment or death under the repealed Act.

Subclause 7(3) provides that the amount of compensation (if any) payable under the proposed Principal Act in respect of a permanent impairment or death occurring before the commencing day is the amount that would have been payable under the repealed Act at the time the impairment or death occurred.

Subclause 7(4) provides that compensation will not be payable under clause 43 of the proposed Principal Act for household services or attendant care services in respect of any period occurring before the commencing day.

Subclause 7(5) outlines certain circumstances where weekly compensation will not be payable. Weekly compensation will not be payable for a prescribed child of a deceased seafarer, or for injuries to an employee resulting in incapacity, where that weekly compensation relates to a period occurring before the commencing day, if the person had received weekly compensation under the repealed Act in relation to that period, or if the person was not entitled to weekly compensation under the repealed Act.

Subclause 7(6) provides that if, before the commencing day, a person had not received weekly compensation relating to a period occurring before that date, the rate of compensation payable under the proposed Principal Act in relation to that period will be the same rate as would have been payable under the repealed Act if the proposed Principal Act had not been enacted.

Subclause 7(7) provides that a person will not be entitled to compensation for medical and related expenses or funeral expenses, if compensation for those expenses had been paid under the repealed Act, or if compensation was not payable in relation to those expenses under the repealed Act.

Subclause 7(8) provides that the amount of compensation (if any) payable for medical and related expenses or funeral expenses incurred before the commencing day will be the amount that would have been payable under the repealed Act if the proposed Principal Act had not been enacted.

Subclause 7(9) provides that a person will not be entitled to compensation under the proposed Principal Act if proceedings for the recovery of compensation under the repealed Act were not maintainable because of section 6 of that Act.

Clause 8: Payments under the repealed Act

Subclause 8(1) provides that any payments made before the commencing day in respect of a liability under the repealed Act will, on and after that day, be taken to have been made under the corresponding liability under the proposed Principal Act.

Subclause 8(2) provides that any payment made before the commencing day redeeming a liability under the repealed Act will have effect as a redemption made under section 44 of the corresponding liability under the proposed Principal Act.

Clause 9: Notices, claims etc. under the repealed Act

Subclause 9(1) provides that a notice relating to an accident or injury, loss or damage, duly served under section 6 of the repealed Act on the employer before the commencing day, will be taken to be a notice duly given to the employer under the proposed Principal Act.

Subclause 9(2) provides that a claim for compensation under the repealed Act, duly made to the employer before the commencing day, will be taken to be a claim for compensation duly made under the proposed Principal Act.

Subclause 9(3) provides that if an employee was required to be examined by a medical referee or a medical practitioner for the purposes of the repealed Act and that examination had not been completed before the commencing day, the requirement will continue to have effect as if it had been made by the employer under subsection 66(1) of the proposed Principal Act and the medical referee or medical practitioner were a medical practitioner nominated under that subclause.

Subclause 9(4) provides that if an employee was receiving a benefit under an award as well as compensation under the repealed Act, that benefit under the award will cease on the commencing day, unless the employee makes an election within 30 days after the commencing day under clause 61 of the proposed Principal Act.

Clause 10: Settlements and determinations under the repealed Act

Subclause 10(1) provides that any settlement by agreement, arbitration or judicial decision of a liability under the repealed Act that was in force immediately before the commencing day, will, on and after the commencing day, be taken to be a determination by the employer in respect of the corresponding liability under the proposed Principal Act. However, the settlement will not be reviewable under Part 6 of the proposed Principal Act.

Subclause 10(2) provides that a decision or action by an employer in respect of the repealed Act and having effect immediately before the commencing day will, on and after the commencing day, be taken to be a determination made by the employer in respect of the corresponding liability under the proposed Principal Act.

Subclause 10(3) provides that if a determination referred to in subclause 10(2) is, or has been, varied by a court, committee of arbitration or an arbitrator, the varied decision is to be taken as the determination made by the employer in respect of the corresponding liability under the proposed Principal Act.

Clause 11: Employer may reconsider determination made under the repealed Act

The clause enables an employer that has made a decision or taken an action in respect of the repealed Act that has effect immediately before the commencing day, to reconsider that decision as if the person in respect of whom the determination was made were a claimant under the proposed Principal Act and the decision were a determination within the meaning of Part 6 of the proposed Principal Act.

The effect of this provision is to enable employers to reconsider decisions if the circumstances which led to the original decisions change.

Clause 12: Liability under the repealed Act

This clause provides that a liability of an employer to pay compensation under the repealed Act will, to the extent that it had not been discharged before the commencing day, be taken to have been incurred by the employer on that day under the corresponding provision of the proposed Principal Act.

Clause 13: Employee to have right to bring action for damages against employer etc. in certain circumstances

This clause provides that an employee has the right to bring an action for damages against his or her employer or a fellow employee within 6 months of the commencing day.

Paragraph 13(a) provides that an employee will have the right to bring an action or other proceedings against his or her employer or a fellow employee, in respect of an injury sustained by the employee in the course of his or her employment before the commencing day.

Paragraph 13(b) provides that an employee will have the right to bring an action or other proceedings against his or her employer or a fellow employee, in respect of the loss of, or damage to, property used by an employee resulting from such an injury.

Clause 14: Money and investments held under the repealed Act

This clause vests all moneys and investments held for the benefit of a person or persons by a prescribed authority under the repealed Act in the Seafarers Rehabilitation and Compensation Authority. The provision requires the Seafarers Rehabilitation and Compensation Authority to hold such monies and investments for the benefit of that person or persons.

PART 3 - CONSEQUENTIAL AMENDMENTS

Clause 15: Consequential amendments

This clause provides that the Acts specified in the Schedules will be amended as set out in those Schedules.

PART 4 - REPEALS

Clause 16: Repeal of Act

This clause repeals the Seamen's Compensation Act 1911.

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

Commonwealth Employees' Rehabilitation and Compensation Act 1988

Paragraph 5(8)(d)

In this paragraph, which excludes persons covered by the Seamen's Compensation Act 1911 from coverage by the Commonwealth Employees' Rehabilitation and Compensation Act 1988, the reference to the Seamen's Compensation Act 1911 is replaced by a reference to the proposed Seafarers Rehabilitation and Compensation Act 1992.

Navigation Act 1912

Sections 127 and 132 of the Navigation Act 1912 provide medical treatment benefits and wages benefits respectively to a seafarer who receives a hurt or injury, or contracts a disease, in the service of a ship; or who becomes ill while employed on a ship.

The benefits provided under sections 127 and 132 are not limited to injuries that would otherwise be covered by workers compensation schemes; the benefits also broadly equate to the normal medical benefits that would generally apply to workers required to work away from home and to normal sick leave provisions found in other industries.

The purpose of the amendments to the Navigation Act 1912 is to harmonise sections 127 and 132 with similar provisions in the proposed Principal Act.

Paragraph 127 (1) (a)

The owner's liability to provide medical attendance etc in respect of a hurt or injury or the contraction of a disease will no longer be linked to the service of the ship. By the deletion of the term "in the service of the ship", the provision will apply to a hurt, injury or the contraction of a disease arising in an off duty period during the voyage. This is consistent with the proposed Principal Act, which provides coverage during normal recesses.

Subsection 127 (1)

The cross reference to subsection 4 is to be deleted.

Subsection 127 (2)

The cross reference to subsection 4 is to be deleted.

Subsection 127 (4)

This subsection, which limits the shipowner's liability if the seafarer elects to be treated and maintained in a private hospital rather than a public hospital, is to be deleted. There is no provision limiting the shipowner's liability in this way in the proposed Principal Act.

Subsection 132 (1) (a)

The amendment to this paragraph has the effect of removing the entitlement to one week's post recovery convalescence leave. There is no provision for post recovery convalescent leave in the proposed Principal Act.

Paragraph 132 (6) (d)

The existing provision linking the entitlement to wages to an illness contracted on board the ship, or in the service of the ship or its owner, will be replaced by a provision excluding an entitlement to wages if the seaman knowingly concealed an illness, hurt or injury at the time he or she was employed or engaged on the ship.

The proposed amended provision is consistent with the provision in the proposed Principal Act that excludes a disease from being considered as an injury if the employee has at any time for purposes connected with employment in the maritime industry, made a wilful and false representation that he or she did not suffer, or had not previously suffered, from that disease.

SCHEDULE 2

CONSEQUENTIAL AMENDMENT

Social Security Act 1991

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

In this paragraph, which provides that subsection 1069-D20 of the Social Security Act 1991 will not apply to compensation payments, the reference to section 5 of the Seamen's Compensation Act 1911 is replaced by a reference to clauses 31, 33, 34, 35, 36, 37 or 45 of the proposed Seafarers Rehabilitation and Compensation Act 1992.

