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The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Seafarers and Other Legislation Amendment Bill 2016

No. , 2016

(Employment)

A Bill for an Act to amend the law relating to seafarers, and for other purposes

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A Bill for an Act to amend the law relating to seafarers, and for other purposes

The Parliament of Australia enacts:

1 Short title

 This Act is the *Seafarers and Other Legislation Amendment Act 2016*.

2 Commencement

 (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. |  |
| 2. Schedule 1 | 1 July 2017. | 1 July 2017 |
| 3. Schedule 2, Part 1 | The day after this Act receives the Royal Assent. |  |
| 4. Schedule 2, Part 2 | The later of:(a) the 28th day after this Act receives the Royal Assent; and(b) 1 January 2017. |  |
| 5. Schedule 2, Part 3 | 1 July 2017. | 1 July 2017 |
| 6. Schedule 2, Part 4, Division 1 | The day after this Act receives the Royal Assent. |  |
| 7. Schedule 2, Part 4, Division 2 | 1 July 2017. | 1 July 2017 |
| 8. Schedule 2, Part 5 | The day after this Act receives the Royal Assent. |  |
| 9. Schedule 3, Part 1 | The day after this Act receives the Royal Assent. |  |
| 10. Schedule 3, Part 2 | The day after this Act receives the Royal Assent. |  |
| 11. Schedule 3, Part 3 | At the same time as the provisions covered by table item 4. |  |
| 12. Schedule 3, Parts 4 to 7 | 1 July 2017. | 1 July 2017 |
| 13. Schedule 3, Part 8 | The day after this Act receives the Royal Assent. |  |
| 14. Schedule 3, Part 9, Division 1 | The day after this Act receives the Royal Assent. |  |
| 15. Schedule 3, Part 9, Division 2 | 1 July 2017. | 1 July 2017 |
| 16. Schedule 3, Part 10 | The day after this Act receives the Royal Assent. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Repeals

Financial Management and Accountability (Establishment of Special Account) Determination 2002/06

1 The whole of the Determination

Repeal the Determination.

Occupational Health and Safety (Maritime Industry) Act 1993

2 The whole of the Act

Repeal the Act.

Seafarers Rehabilitation and Compensation Levy Act 1992

3 The whole of the Act

Repeal the Act.

Seafarers Rehabilitation and Compensation Levy Collection Act 1992

4 The whole of the Act

Repeal the Act.

Schedule 2—Amendments

Part 1—Catastrophic injuries to seafarers etc.

Seafarers Rehabilitation and Compensation Act 1992

1 Section 3

Insert:

***catastrophic injury*** means an injury, where the conditions specified in the legislative rules are satisfied.

***legislative rules*** means rules made under section 144.

2 Section 43 (heading)

Repeal the heading, substitute:

43 Compensation for household services and attendant care services obtained as a result of a non‑catastrophic injury

3 Subsections 43(1) and (4)

After “injury”, insert “(other than a catastrophic injury)”.

4 At the end of Division 5 of Part 2

Add:

43A Compensation for household services and attendant care services obtained as a result of a catastrophic injury

Household services

 (1) If, as a result of a catastrophic injury to an employee, the employee obtains household services that he or she reasonably requires, compensation is payable at the rate of such amount per week as is reasonable in the circumstances.

 (2) Without limiting the matters that may be taken into account in determining the household services that are reasonably required in a particular case, the employer must have regard to the following matters:

 (a) the extent to which household services were provided by the employee before the date of the catastrophic injury and the extent to which he or she is able to provide those services after that date;

 (b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;

 (c) the extent to which household services were provided by the persons referred to in paragraph (b) before the catastrophic injury;

 (d) the extent to which the persons referred to in paragraph (b), or any other members of the employee’s family, might reasonably be expected to provide household services for themselves and for the employee after the catastrophic injury;

 (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also section 16.

Attendant care services

 (3) If, as a result of a catastrophic injury to an employee, the employee obtains attendant care services that he or she reasonably requires, compensation is payable at the rate of such amount per week as is reasonable in the circumstances.

 (4) Without limiting the matters that may be taken into account in determining the attendant care services that are reasonably required in a particular case, the employer must have regard to the following matters:

 (a) the nature of the employee’s catastrophic injury and the degree to which that injury impairs the employee’s ability to provide for his or her personal care;

 (b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;

 (c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;

 (d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;

 (e) any assessment made in relation to the rehabilitation of the employee;

 (f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.

Note: In relation to paragraph (4)(f), see also section 16.

Recipient of compensation

 (5) An amount of compensation payable under subsection (1) or (3) is payable:

 (a) if the employee has paid for the household services or attendant care services, as the case may be—to the employee; or

 (b) in any other case—to the person who provided those services.

 (6) If an amount of compensation is paid under subsection (1) or (3) to a person who provided household services or attendant care services to an employee, the payment of the amount is, to the extent of the payment, a discharge of the liability of the employee to pay for those services.

5 Subsection 76(1) (definition of *determination*)

After “43,”, insert “43A,”.

6 At the end of Part 9

Add:

144 Legislative rules

 (1) The Minister may, by legislative instrument, make rules (***legislative rules***) prescribing matters:

 (a) required or permitted by this Act to be prescribed by the legislativerules; or

 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

 (2) To avoid doubt, the legislativerules may not do the following:

 (a) create an offence or civil penalty;

 (b) provide powers of:

 (i) arrest or detention; or

 (ii) entry, search or seizure;

 (c) impose a tax;

 (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

 (e) directly amend the text of this Act.

Part 2—Implementation of amendments of the Maritime Labour Convention relating to insurance obligations of employers of seafarers

Seafarers Rehabilitation and Compensation Act 1992

7 At the end of section 93

Add:

 (5) An employer applying for membership of:

 (a) a protection and indemnity association; or

 (b) an employers’ mutual indemnity association;

in relation to liability under this Act must give the association a full and correct statement of:

 (c) all salaries or wages paid to employees; and

 (d) all other remuneration provided to employees, whether in monetary form or otherwise;

for the period relevant to working out the membership fee.

 (6) An employer’s membership of:

 (a) a protection and indemnity association; or

 (b) an employers’ mutual indemnity association;

in relation to liability under this Act is not subject to stamp duty or any other tax under a law of a State or Territory.

8 After section 94

Insert:

94A Employer to notify Authority of changes to, or cancellation or termination of, insurance or indemnity arrangements

 (1) If:

 (a) an employer:

 (i) has a policy of insurance or indemnity; or

 (ii) is a member of a protection and indemnity association or an employers’ mutual indemnity association;

 referred to in section 93; and

 (b) either:

 (i) there is a change to the policy or membership; or

 (ii) the policy or membership is cancelled or terminated;

the employer must:

 (c) notify the Authority of the change, cancellation or termination, as the case may be; and

 (d) do so within 14 days after the change, cancellation or termination, as the case may be.

Offence

 (2) A person commits an offence if:

 (a) the person is subject to a requirement under subsection (1); and

 (b) the person omits to do an act; and

 (c) the omission breaches the requirement.

Penalty: 20 penalty units.

 (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

9 At the end of Division 1 of Part 7

Add:

95A Employer to notify employees of prospective cancellation or termination of insurance or indemnity arrangements

 (1) If:

 (a) an employer:

 (i) has a policy of insurance or indemnity; or

 (ii) is a member of a protection and indemnity association or an employers’ mutual indemnity association;

 referred to in section 93; and

 (b) the employer becomes aware that the policy or membership is to be cancelled or terminated;

the employer must:

 (c) notify the prospective cancellation or termination to each of the employees of the employer; and

 (d) do so:

 (i) as soon as practicable after becoming so aware; and

 (ii) before the policy or membership is cancelled or terminated.

Offence

 (2) A person commits an offence if:

 (a) the person is subject to a requirement under subsection (1); and

 (b) the person omits to do an act; and

 (c) the omission breaches the requirement.

Penalty: 20 penalty units.

 (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

95B Information about insurance or indemnity arrangements to be displayed on board a vessel

Vessel operated by employer

 (1) If:

 (a) an employer:

 (i) has a policy of insurance or indemnity; or

 (ii) is a member of a protection and indemnity association or an employers’ mutual indemnity association;

 referred to in section 93; and

 (b) one or more employees of the employer are employed on a vessel that is registered under the *Shipping Registration Act 1981*; and

 (c) the employer is the operator of the vessel;

the employer must ensure that, at all times when any of those employees is on the vessel:

 (d) a certificate that complies with subsection (3); and

 (e) a statement that complies with subsection (4);

are displayed on board the vessel in a conspicuous position that is readily accessible to each of those employees.

Vessel operated by person other than employer

 (2) If:

 (a) an employer:

 (i) has a policy of insurance or indemnity; or

 (ii) is a member of a protection and indemnity association or an employers’ mutual indemnity association;

 referred to in section 93; and

 (b) one or more employees of the employer are employed on a vessel that is registered under the *Shipping Registration Act 1981*; and

 (c) the employer is not the operator of the vessel;

the operator must ensure that, at all times when any of those employees is on the vessel:

 (d) a certificate that complies with subsection (3); and

 (e) a statement that complies with subsection (4);

are displayed on board the vessel in a conspicuous position that is readily accessible to each of those employees.

Certificate of insurance etc.

 (3) The certificate mentioned in paragraph (1)(d) or (2)(d) must:

 (a) in the case of a policy of insurance or indemnity from an authorised insurer:

 (i) be issued by the authorised insurer; and

 (ii) set out such information about the policy as is specified in the legislative rules; and

 (b) in the case of membership of a protection and indemnity association or an employers’ mutual indemnity association:

 (i) be issued by the association; and

 (ii) set out such information about the membership as is specified in the legislative rules.

Information statement

 (4) The statement mentioned in paragraph (1)(e) or (2)(e) must set out:

 (a) such information about the vessel as is specified in the legislative rules; and

 (b) such other information (if any) as is specified in the legislative rules.

Offence

 (5) A person commits an offence if:

 (a) the person is subject to a requirement under subsection (1) or (2); and

 (b) the person omits to do an act; and

 (c) the omission breaches the requirement.

Penalty: 20 penalty units.

 (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Definitions

 (7) In this section:

***operator*** of a vessel means:

 (a) a person with overall general control and management of the vessel; or

 (b) a person who has assumed responsibility for the vessel from:

 (i) a person referred to in paragraph (a); or

 (ii) a person who has a legal or beneficial interest in the vessel.

***vessel*** means a ship.

Part 3—Other amendments relating to seafarers

Offshore Petroleum and Greenhouse Gas Storage Act 2006

10 Subsection 640(3) (paragraph (b) of the definition of *Commonwealth maritime legislation*)

Repeal the paragraph, substitute:

 (b) the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act; and

Safety, Rehabilitation and Compensation Act 1988

11 Subsection 4(1)

Insert:

***designated actuary*** has the same meaning as in the *Seafarers Safety and Compensation Levies Act 2016*.

***Seacare Advisory Group*** means the Seacare Advisory Group constituted under section 89RA.

12 Section 69 (note)

After “*2005*”, insert “, the *Seafarers Rehabilitation and Compensation Act 1992*”.

13 Section 72A (heading)

Repeal the heading, substitute:

72A Duty to assist the Commission

14 Subsection 72A(1)

Omit “(1)”.

15 Subsection 72A(2)

Repeal the subsection.

16 Section 89B (note)

After “by”, insert “the *Seafarers Rehabilitation and Compensation Act 1992*, the *Seafarers and Other Legislation Amendment Act 2016* and”.

17 After section 89R

Insert:

89RA Seacare Advisory Group

 (1) The Chairperson may constitute a committee, to be known as the Seacare Advisory Group.

 (2) The Seacare Advisory Group has the following functions:

 (a) to assist the Commission in the performance of the Commission’s functions, and the exercise of the Commission’s powers, under the following provisions:

 (i) Divisions 3 and 4 of Part 1A of the *Seafarers Rehabilitation and Compensation Act 1992*;

 (ii) subsection 274(2B) of the *Work Health and Safety Act 2011*;

 (b) to give advice or information to the Commission about a matter that relates to:

 (i) the *Seafarers Rehabilitation and Compensation Act 1992*; or

 (ii) the *Seafarers Safety and Compensation Levies Act 2016*; or

 (iii) the *Seafarers Safety and Compensation Levies Collection Act 2016*;

 if the Seacare Advisory Group is requested to do so by the Commission;

 (c) to give advice or information to Comcare about a matter that relates to compliance with section 93 of the *Seafarers Rehabilitation and Compensation Act 1992*;

 (d) to give advice or information to Comcare about any other matter that relates to the *Seafarers Rehabilitation and Compensation Act 1992*, if:

 (i) the Seacare Advisory Group is requested to do so by Comcare; or

 (ii) the Seacare Advisory Group considers that doing so on its own initiative is likely to assist Comcare in the performance of Comcare’s functions, or the exercise of Comcare’s powers, under that Act;

 (e) to give advice or information to the designated actuary about a matter that relates to the exercise of the designated actuary’s powers under the *Seafarers Safety and Compensation Levies Act 2016*, if the Seacare Advisory Group is requested to do so by the designated actuary;

 (f) such other functions as are conferred on the Seacare Advisory Group by a law of the Commonwealth other than this Act; and

 (g) to do anything incidental to or conducive to the performance of any of the above functions.

 (3) In performing its functions, or exercising its powers under:

 (a) the *Seafarers Rehabilitation and Compensation Act 1992*; or

 (b) the *Seafarers Safety and Compensation Levies Act 2016*; or

 (c) the *Seafarers Safety and Compensation Levies Collection Act 2016*;

the Commission must have regard to any relevant advice or information given to it by the Seacare Advisory Group.

 (4) Subsection (3) does not, by implication, limit the matters to which the Commission may have regard.

 (5) In performing its functions, or exercising its powers under the *Seafarers Rehabilitation and Compensation Act 1992*, Comcare must have regard to any relevant advice or information given to it by the Seacare Advisory Group.

 (6) Subsection (5) does not, by implication, limit the matters to which Comcare may have regard.

 (7) In exercising his or her powers under the *Seafarers Safety and Compensation Levies Act 2016*, the designated actuary must have regard to any relevant advice or information given to the designated actuary by the Seacare Advisory Group.

 (8) Subsection (7) does not, by implication, limit the matters to which the designated actuary may have regard.

 (9) The Seacare Advisory Group has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

Members

 (10) The Seacare Advisory Group is to be constituted by such persons as the Chairperson appoints.

 (11) At least one member of the Seacare Advisory Group must be a person appointed on the nomination of an organisation or organisations that the Chairperson is satisfied represents the interests of employers of employees (within the meaning of the *Seafarers Rehabilitation and Compensation Act 1992*).

 (12) At least one member of the Seacare Advisory Group must be a person appointed on the nomination of an organisation or organisations that the Chairperson is satisfied represents the interests of employees (within the meaning of the *Seafarers Rehabilitation and Compensation Act 1992*).

 (13) A member of the Seacare Advisory Group must not be paid remuneration or allowances.

 (14) However, the Chairperson may determine that a member of the Seacare Advisory Group is to be reimbursed the expenses that the member reasonably incurs in performing duties as a member.

 (15) A member of the Seacare Advisory Group may resign his or her appointment by giving the Chairperson a written resignation.

 (16) The resignation takes effect on the day it is received by the Chairperson or, if a later day is specified in the resignation, on that later day.

 (17) The Chairperson may terminate the appointment of a member of the Seacare Advisory Group.

 (18) A member of the Seacare Advisory Group holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Chairperson.

Procedures

 (19) The procedures under which the Seacare Advisory Group is to operate are to be as determined by the Chairperson.

Reports, documents and information

 (20) The Seacare Advisory Group must give the Commission such reports, documents and information in relation to the Seacare Advisory Group’s functions as the Commission requests.

18 At the end of section 89S

Add:

 (3) If the Seacare Advisory Group was constituted under section 89RA during the whole or a part of a financial year, a report under this section for the financial year must include a statement that:

 (a) outlines the membership of the Seacare Advisory Group during the financial year; and

 (b) outlines the activities of the Seacare Advisory Group during the financial year in relation to:

 (i) the function set out in paragraph 89RA(2)(a); and

 (ii) the consultation requirements set out in subsection 4A(4) of the *Seafarers Rehabilitation and Compensation Act 1992*; and

 (iii) the consultation requirements set out in subsection 10(5) of the *Seafarers Safety and Compensation Levies Act 2016*; and

 (iv) the consultation requirements set out in subsection 14(6) of the *Seafarers Safety and Compensation Levies Act 2016*; and

 (c) lists the significant matters on which the Seacare Advisory Group gave advice to the Commission during the financial year.

 (4) If the Seacare Advisory Group was not constituted under section 89RA during the whole or a part of a financial year, a report under this section for the financial year must include a statement that sets out the reasons why the Seacare Advisory Group was not so constituted.

 (5) Subsection (4) does not apply to a financial year that ended before the commencement of that subsection.

Seafarers Rehabilitation and Compensation Act 1992

19 Section 3

Insert:

***action for non‑economic loss*** means any action (whether or not it involves the formal institution of a proceeding):

 (a) to recover an amount for damages for non‑economic loss sustained by an employee as a result of an injury suffered by that employee; and

 (b) that is taken by the employee against the employer or another employee; and

 (c) that follows an election made by the first‑mentioned employee under subsection 55(1).

20 Section 3 (paragraph (a) of the definition of *approved Guide*)

Omit “the Authority”, substitute “Comcare”.

21 Section 3 (definition of *approved industry training course*)

Repeal the definition.

22 Section 3

Insert:

***Australia***, when used in a geographical sense, includes the external Territories.

***Australian coastal sea*** means the area comprising:

 (a) the territorial sea of Australia; and

 (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Territory.

23 Section 3 (definition of *Australian General Shipping Register*)

Repeal the definition.

24 Section 3 (definition of *Australian International Shipping Register*)

Repeal the definition.

25 Section 3 (definition of *Australian Maritime Safety Authority*)

Repeal the definition.

26 Section 3 (definition of *Authority*)

Repeal the definition.

27 Section 3 (definition of *Chairperson*)

Repeal the definition.

28 Section 3 (definition of *coastal trading*)

Repeal the definition.

29 Section 3

Insert:

***Commission*** means the Safety, Rehabilitation and Compensation Commission.

Note: The Commission is established by section 89A of the *Safety, Rehabilitation and Compensation Act 1988*.

30 Section 3 (definition of *company trainee*)

Repeal the definition.

31 Section 3

Insert:

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

32 Section 3 (definition of *default event*)

Repeal the definition, substitute:

***default event*** has the meaning given by section 4A.

33 Section 3

Insert:

***designated waters***:

 (a) in relation to a State—means:

 (i) the territorial sea of Australia that is adjacent to the State; and

 (ii) the sea that is on the landward side of the territorial sea mentioned in subparagraph (i) and not within the limits of the State; and

 (iii) waters within the limits of the State; or

 (b) in relation to the Northern Territory—means:

 (i) the territorial sea of Australia that is adjacent to the Northern Territory; and

 (ii) the sea that is on the landward side of the territorial sea mentioned in subparagraph (i) and not within the limits of the Northern Territory; and

 (iii) waters within the limits of the Northern Territory.

34 Section 3 (definition of *disease*)

Repeal the definition, substitute:

***disease*** has the meaning given by section 5B.

35 Section 3 (definition of *emergency licence*)

Repeal the definition.

36 Section 3 (definition of *financial corporation*)

Repeal the definition.

37 Section 3

Insert:

***fish*** includes turtles, dugong, crustacea, molluscs and any other living resources of the sea or of the seabed.

***fishing fleet support vessel*** has the meaning given by section 3B.

***fishing operations*** means:

 (a) the taking, catching or capturing of fish for trading or manufacturing purposes; or

 (b) the processing or carrying of the fish that are taken, caught or captured.

***fishing vessel*** has the meaning given by section 3B.

38 Section 3 (definition of *foreign corporation*)

Repeal the definition.

39 Section 3

Insert:

***foreign vessel*** means a ship (within the meaning of the *Shipping Registration Act 1981*) that does not have Australian nationality.

Note: See section 29 of the *Shipping Registration Act 1981*.

40 Section 3 (definition of *Fund*)

Repeal the definition.

41 Section 3 (definition of *general licence*)

Repeal the definition.

42 Section 3 (definition of *Government ship*)

Repeal the definition.

43 Section 3

Insert:

***government vessel*** means a vessel:

 (a) that belongs to the Commonwealth or a State or Territory; or

 (b) the beneficial interest in which is vested in the Commonwealth or a State or Territory; or

 (c) that is for the time being demised or sub‑demised to, or in the exclusive possession of, the Commonwealth or a State or Territory;

and includes a vessel that belongs to an arm of the Defence Force, but does not include a vessel:

 (d) that belongs to a trading corporation that is an authority or agency of the Commonwealth or of a State or a Territory; or

 (e) the beneficial interest in which is vested in such a trading corporation; or

 (f) that is for the time being demised or sub‑demised to, or in the exclusive possession of, such a trading corporation; or

 (g) that is operated by seafarers supplied (directly or indirectly) by a corporation under a contract with the Commonwealth or a State or Territory.

***harbour*** means a natural or artificial harbour, and includes:

 (a) a navigable estuary, river, creek or channel; and

 (b) a haven, roadstead, dock, pier, jetty or offshore terminal; and

 (c) any other place in or at which vessels can obtain shelter or load and unload goods or embark and disembark passengers.

44 Section 3 (definition of *industry trainee*)

Repeal the definition.

45 Section 3 (definition of *injury*)

Repeal the definition, substitute:

***injury*** has the meaning given by section 5A.

46 Section 3

Insert:

***inland waterways vessel*** means a vessel that is used wholly in waters other than waters of the sea.

***local tourism vessel*** means a vessel that is wholly or predominantly engaged in tourism, other than tourism that involves a voyage by the vessel:

 (a) between Australia and a foreign country; or

 (b) between 2 States; or

 (c) between 2 Territories, neither of which is the Coral Sea Islands Territory; or

 (d) between a State and a Territory (other than the Coral Sea Islands Territory).

47 Section 3 (at the end of the definition of *medical treatment*)

Add:

 ; or (i) anything else that is prescribed by the legislative rules for the purposes of this definition.

48 Section 3 (definition of *member*)

Repeal the definition.

49 Section 3

Insert:

***offshore floating storage or production unit*** has the meaning given by section 3D.

***offshore industry mobile unit*** has the meaning given by section 3C.

***operator*** of a vessel means:

 (a) a person with overall general control and management of the vessel; or

 (b) a person who has assumed responsibility for the vessel from:

 (i) a person referred to in paragraph (a); or

 (ii) a person who has a legal or beneficial interest in the vessel.

***opt‑in declaration*** means a declaration under section 25H.

***pension age*** has the meaning given by subsection 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*.

50 Section 3 (paragraph (a) of the definition of *place of work*)

Omit “ship”, substitute “vessel”.

51 Section 3 (paragraph (b) of the definition of *place of work*)

Repeal the paragraph, substitute:

 (b) if the employee is a trainee—includes the prescribed vessel on which the employee performs the role of a trainee.

52 Section 3

Insert:

***port*** includes a harbour.

53 Section 3 (definition of *prescribed ship*)

Repeal the definition.

54 Section 3

Insert:

***prescribed vessel*** has the meaning given by section 3A.

***recreational vessel*** has the same meaning as in the *Navigation Act 2012*.

***registered organisation*** means an organisation registered under the *Fair Work (Registered Organisations) Act 2009*.

***sea*** includes any waters within the ebb and flow of the tide.

55 Section 3 (definition of *seafarer*)

Repeal the definition, substitute:

***seafarer*** means a person who is employed in any capacity (including that of master) on a prescribed vessel, on the business of the vessel, other than the following:

 (a) a licensed pilot of the vessel (acting as such a pilot);

 (b) an owner of the vessel or a person (except the master) representing the owner;

 (c) law enforcement personnel (in their capacity as law enforcement personnel);

 (d) if the vessel is a special purpose vessel—special personnel in relation to the vessel;

 (e) a person temporarily employed on the vessel in port;

 (f) a person prescribed by regulations made for the purposes of paragraph (f) of the definition of ***seafarer*** in section 14 of the *Navigation Act 2012*.

For the purposes of this definition, ***master***, ***licensed pilot***, ***owner***, ***special purpose vessel*** and ***special personnel*** have the same respective meanings as in the *Navigation Act 2012*.

56 Section 3 (definition of *seafarer berth*)

Repeal the definition.

57 Section 3

Insert:

***seafarers*** ***insurance levy*** has the same meaning as in the *Seafarers Safety and Compensation Levies Act 2016*.

58 Section 3

Insert:

***significant degree*** means a degree that is substantially more than material.

59 Section 3 (definition of *superannuation scheme*)

Repeal the definition, substitute:

***superannuation scheme*** means:

 (a) a superannuation scheme, or superannuation fund, under which an employer makes contributions on behalf of its employees; or

 (b) a retirement savings account to which an employer makes contributions on behalf of its employees.

For the purposes of this definition, disregard sections 25B, 25C and 25D.

60 Section 3 (definition of *trainee*)

Repeal the definition, substitute:

***trainee*** means a person who:

 (a) is undergoing a training course as required by his or her employer before becoming a seafarer; or

 (b) is obtaining sea service as required by his or her employer before becoming a seafarer.

61 Section 3

Insert:

***transitional declaration*** has the same meaning as in Part 8 of Schedule 3 to the *Seafarers and Other Legislation Amendment Act 2016*.

***vessel*** means any kind of vessel used in navigation by water, however propelled or moved, and includes:

 (a) a barge, lighter or other floating vessel; and

 (b) an air‑cushion vehicle, or other similar craft, used wholly or primarily in navigation by water.

62 Section 3A

Repeal the section, substitute:

3A Prescribed vessel

 (1) In this Act:

***prescribed vessel*** means:

 (a) a vessel registered, or required to be registered, under the *Shipping Registration Act 1981*; or

 (b) a foreign vessel of which the majority of the crew are residents of Australia; or

 (c) a vessel that is declared under subsection (2) to be a prescribed vessel;

but does not include:

 (d) a recreational vessel; or

 (e) an inland waterways vessel; or

 (f) a fishing vessel; or

 (g) a fishing fleet support vessel; or

 (h) an offshore floating storage or production unit; or

 (i) an offshore industry mobile unit; or

 (j) a government vessel; or

 (k) a local tourism vessel; or

 (l) a vessel that is declared under subsection (3) not to be a prescribed vessel.

 (2) The legislative rules may declare a vessel to be a prescribed vessel.

 (3) The legislative rules may declare a vessel not to be a prescribed vessel.

 (4) If a vessel is the subject of a transitional declaration, the vessel is taken to be a ***prescribed vessel*** for the purposes of this Act (other than Division 2 or 3 of Part 1A).

3B Fishing vessels

 (1) In this Act:

***fishing fleet support vessel*** means a vessel that is used wholly or primarily in activities in support of the fishing operations of a fishing vessel or vessels, but does not include an inland waterways vessel.

***fishing vessel*** means a vessel:

 (a) that is used wholly or primarily for fishing operations; and

 (b) that:

 (i) is registered, or entitled to be registered, under the *Shipping Registration Act 1981*; or

 (ii) is covered by an instrument in force under subsection 4(2) of the *Fisheries Management Act 1991*;

but does not include an inland waterways vessel.

 (2) For the purposes of this Act, activities in support of the fishing operations of a fishing vessel include:

 (a) the storage and transport of fish taken, caught or captured by the fishing vessel; and

 (b) the provision of food, fuel and other supplies to the fishing vessel while it is engaged in fishing operations; and

 (c) the transport of crew members to and from the fishing vessel while it is engaged in fishing operations.

3C Offshore industry mobile unit

 (1) In this Act:

***offshore industry mobile unit*** means:

 (a) an offshore industry floating structure; or

 (b) an offshore industry living quarters barge; or

 (c) an offshore industry drilling vessel.

 (2) In this section:

***natural resources*** means the mineral and other non‑living resources of the seabed and its subsoil.

***offshore industry drilling vessel*** means a vessel that is used, or intended for use, wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of:

 (a) the continental shelf of Australia; or

 (b) the seabed of the Australian coastal sea; or

 (c) the subsoil of that seabed;

by drilling the seabed or its subsoil, or by obtaining substantial quantities of material from the seabed or its subsoil, with equipment that is on, or forms part of, the vessel.

***offshore industry fixed structure*** means a structure (including a pipeline) that:

 (a) is fixed to the seabed and is not able to move or be moved as an entity from one place to another; and

 (b) is used, or intended for use, in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of:

 (i) the continental shelf of Australia; or

 (ii) the seabed of the Australian coastal sea; or

 (iii) the subsoil of that seabed.

***offshore industry floating structure*** means a structure that:

 (a) is not a vessel; and

 (b) is able to float or be floated; and

 (c) is able to move or be moved as an entity from one place to another; and

 (d) is used, or intended for use, wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the natural resources of:

 (i) the continental shelf of Australia; or

 (ii) the seabed of the Australian coastal sea; or

 (iii) the subsoil of that seabed;

 by drilling the seabed or its subsoil, or by obtaining substantial quantities of material from the seabed or its subsoil, with equipment that is on, or forms part of, the structure.

***offshore industry living quarters barge*** means a barge, or similar vessel, that:

 (a) is fitted with living quarters for more than 12 persons; and

 (b) is used, or intended for use, wholly or primarily in connection with the construction, maintenance or repair of offshore industry fixed structures.

3D Offshore floating storage or production unit

 (1) In this Act:

***offshore floating storage or production unit*** means a vessel that is:

 (a) constructed or modified to accept petroleum, directly or indirectly, from a sub‑sea well or pipeline; and

 (b) capable of storing the petroleum and delivering it to another vessel or pipeline; and

 (c) designed to be disconnected from its mooring:

 (i) during bad weather; or

 (ii) during an operational emergency; or

 (iii) for the purposes of maintenance of the vessel; or

 (iv) for the purposes of a survey of the vessel;

but does not include a vessel capable of engaging in drilling operations for the exploration for, or the exploitation of, resources beneath the seabed.

 (2) For the purposes of subsection (1), it is immaterial whether the vessel is capable of modifying petroleum while in storage on the vessel:

 (a) to suit it for transport; or

 (b) to fit it for the commercial requirements of a consignee.

 (3) For the purposes of this section, ***petroleum*** has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

63 Subsection 4(1) (paragraph (b) of the definition of *employee*)

Omit “trainee; or”, substitute “trainee.”.

64 Subsection 4(1) (paragraph (c) of the definition of *employee*)

Repeal the paragraph.

65 At the end of subsection 4(1)

Add:

Note: See also section 18A of the *Acts Interpretation Act 1901*.

66 Subsection 4(2)

Repeal the subsection.

67 Subsection 4(3)

Repeal the subsection, substitute:

 (3) If:

 (a) a default event occurs in relation to the employer of a seafarer or of a trainee; or

 (b) immediately before the start of 1 July 2017, the Seafarers Safety, Rehabilitation and Compensation Authority was the employer of:

 (i) a seafarer (within the meaning of this Act as in force immediately before the start of 1 July 2017); or

 (ii) a trainee (within the meaning of this Act as in force immediately before the start of 1 July 2017);

 because of repealed subsection (2) or (3) of this section (when read together with repealed section 101);

then, for the purposes of this Act:

 (c) the seafarer or trainee is taken to be employed by Comcare; and

 (d) Comcare is taken to be the employer of the seafarer or trainee.

68 Subsection 4(5)

Repeal the subsection, substitute:

 (5) To avoid doubt, a reference in this Act to the employment of an employee is, if the employee is a trainee, a reference to the employee’s performance of the role of a trainee.

69 After section 4

Insert:

4A Default event

 (1) For the purposes of this Act, a ***default event*** occurs in relation to an employer when Comcare, by writing, declares that Comcare is satisfied that the employer is unable to meet the employer’s liabilities under this Act.

 (2) If an employer is a body corporate, Comcare must not make a declaration under subsection (1) in relation to the employer unless the employer:

 (a) is being wound‑up; or

 (b) ceases to exist.

 (3) If an employer is an individual, Comcare must not make a declaration under subsection (1) in relation to the employer unless the employer:

 (a) becomes bankrupt; or

 (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

 (c) compounds with the employer’s creditors; or

 (d) makes an assignment of the employer’s property for the benefit of the employer’s creditors.

 (4) If the Seacare Advisory Group has been constituted under section 89RA of the *Safety, Rehabilitation and Compensation Act 1988*, then, before making a declaration under subsection (1) of this section, Comcare must consult the Seacare Advisory Group.

 (5) Comcare must publish a declaration under subsection (1) on Comcare’s website.

 (6) A declaration under subsection (1) is not a legislative instrument.

70 Section 5

Omit “ship” (wherever occurring), substitute “vessel”.

71 After section 5

Insert:

5A Injury

 (1) In this Act:

***injury*** means:

 (a) a disease suffered by an employee; or

 (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee’s employment; or

 (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee’s employment), that is an aggravation that arose out of, or in the course of, that employment;

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee’s employment.

Note: For ***disease***, see section 5B.

Reasonable administrative action

 (2) For the purposes of subsection (1), ***reasonable*** ***administrative action*** includes (but is not limited to) the following:

 (a) a reasonable appraisal of the employee’s performance;

 (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee’s employment;

 (c) a reasonable suspension action in respect of the employee’s employment;

 (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee’s employment;

 (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);

 (f) anything reasonable done in connection with the employee’s failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

5B Disease

 (1) In this Act:

***disease*** means:

 (a) an ailment suffered by an employee; or

 (b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee’s employment.

 (2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee’s employment, the following matters may be taken into account:

 (a) the duration of the employment;

 (b) the nature of, and particular tasks involved in, the employment;

 (c) any predisposition of the employee to the ailment or aggravation;

 (d) any activities of the employee not related to the employment;

 (e) any other matters affecting the employee’s health.

This subsection does not limit the matters that may be taken into account.

72 Section 9

Omit “ship” (wherever occurring), substitute “vessel”.

73 Paragraph 9(2)(c)

Omit “required course of training”, substitute “training course that the trainee was required by his or her employer to undergo”.

74 Paragraph 9(2)(c)

Omit “that course of training”, substitute “that training course”.

75 Paragraph 9(2)(d)

Repeal the paragraph, substitute:

 (d) if the employee is a trainee—while the trainee was obtaining sea service that the trainee was required by his or her employer to obtain (including during an ordinary recess in that sea service); or

76 Subparagraph 9(2)(e)(iii)

Repeal the subparagraph.

77 Subparagraph 9(2)(e)(v)

Omit “a required course of training was being conducted”, substitute “the trainee was undergoing training that the trainee was required by his or her employer to undergo”.

78 Subsection 9(3)

Omit “(iii),”.

79 After subsection 9(3)

Insert:

 (3A) Subparagraph (2)(e)(i), (iv), (v) or (vi) does not apply in relation to travel by an employee if:

 (a) the travel was from the employee’s place of work; and

 (b) the employee delayed commencing the travel; and

 (c) the reason for the delay was private or domestic;

unless:

 (d) the delay is attributable to circumstances beyond the control of the employee; or

 (e) both:

 (i) the delay does not exceed 72 hours; and

 (ii) the employer has given written agreement to the delay.

 (3B) Subparagraph (2)(e)(i), (iv), (v) or (vi) does not apply in relation to travel by an employee if:

 (a) the travel was by a route that was not direct having regard to the means of transport used; and

 (b) the reason for taking the route was private or domestic;

unless taking the route is attributable to circumstances beyond the control of the employee.

 (3C) Subparagraph (2)(e)(i), (iv), (v) or (vi) does not apply in relation to travel by an employee if:

 (a) there was an interruption of the travel; and

 (b) the reason for the interruption was private or domestic;

unless:

 (c) the interruption is attributable to circumstances beyond the control of the employee; or

 (d) both:

 (i) the interruption does not exceed 72 hours; and

 (ii) the employer has given written agreement to the interruption.

80 Subsection 9(5)

Repeal the subsection.

81 Subsection 13(3)

Repeal the subsection.

82 Section 19

Repeal the section.

83 Section 20A

Repeal the section.

84 After Part 1

Insert:

Part 1A—Coverage

Division 1—Introduction

25A Simplified outline of this Part

• This Act applies to the employment of an employee on a prescribed vessel if:

 (a) the vessel is not used wholly or predominantly for intra‑State voyages or tasks; and

 (b) a constitutional condition is satisfied.

• This Act applies to the employment of an employee on a prescribed vessel if:

 (a) the vessel is the subject of an opt‑in declaration; and

 (b) a constitutional condition is satisfied.

• This Act applies to the employment of an employee on a vessel if:

 (a) the vessel is the subject of a transitional declaration; and

 (b) a constitutional condition is satisfied.

• The Commission may exempt the employment of any or all of the employees on a particular vessel from the application of this Act.

Division 2—Employment covered by this Act

25B Basic coverage rules

 (1) This Act applies to the employment of an employee on a prescribed vessel if:

 (a) the vessel is not used wholly or predominantly for intra‑State voyages or tasks; and

 (b) any of the conditions set out in subsection (3) is satisfied.

 (2) This Act applies to the employment of a trainee who, as required by his or her employer, is undergoing a training course in connection with, or for the purpose of, employment by the employer on a prescribed vessel if:

 (a) the vessel is not used wholly or predominantly for intra‑State voyages or tasks; and

 (b) any of the conditions set out in subsection (3) is satisfied.

Constitutional conditions

 (3) For the purposes of paragraphs (1)(b) and (2)(b), the conditions are as follows:

 (a) the employer is a constitutional corporation;

 (b) the operator of the vessel is a constitutional corporation;

 (c) any of the following subparagraphs applies:

 (i) a constitutional corporation holds more than 50% of the legal ownership of the vessel;

 (ii) a constitutional corporation holds more than 50% of the beneficial ownership of the vessel;

 (iii) 2 or more constitutional corporations hold, in total, more than 50% of the legal ownership of the vessel;

 (iv) 2 or more constitutional corporations hold, in total, more than 50% of the beneficial ownership of the vessel;

 (d) the vessel is engaged in trade or commerce:

 (i) between Australia and places outside Australia; or

 (ii) among the States; or

 (iii) within a Territory, between a State and a Territory or between 2 Territories;

 (e) the vessel is not within the limits of a State or Territory;

 (f) the vessel is within the limits of a Territory.

 (4) Subparagraphs (3)(c)(i) to (iv) do not apply to a constitutional corporation that has no involvement, or negligible involvement, in the overall general control and management of the vessel.

Intra‑State voyages or tasks

 (5) For the purposes of this section, ***intra‑State voyage or task*** means:

 (a) a voyage, or other task, that is wholly within the designated waters of a particular State; or

 (b) a voyage, or other task, that is wholly within the designated waters of the Northern Territory.

Certain voyages taken to be wholly within designated waters

 (6) For the purposes of paragraph (5)(a), if:

 (a) a vessel is proceeding on a voyage between 2 places in a particular State; and

 (b) in the course of the voyage, the vessel is present in waters beyond the outer limits of the designated waters of the State; and

 (c) the presence of the vessel in waters beyond those outer limits is because it is not reasonably practicable for the vessel to remain within the designated waters of the State;

the voyage is taken to be wholly within the designated waters of the State.

 (7) For the purposes of paragraph (5)(b), if:

 (a) a vessel is proceeding on a voyage between 2 places in the Northern Territory; and

 (b) in the course of the voyage, the vessel is present in waters beyond the outer limits of the designated waters of the Northern Territory; and

 (c) the presence of the vessel in waters beyond those outer limits is because it is not reasonably practicable for the vessel to remain within the designated waters of the Northern Territory;

the voyage is taken to be wholly within the designated waters of the Northern Territory.

Note: See also sections 25M and 25N (exemptions).

25C Opt‑in vessels

 (1) This Act applies to the employment of an employee on a prescribed vessel if:

 (a) the vessel is the subject of an opt‑in declaration; and

 (b) the employee is covered by the declaration; and

 (c) any of the conditions set out in subsection (3) is satisfied.

 (2) This Act applies to the employment of a trainee who, as required by his or her employer, is undergoing a training course in connection with, or for the purpose of, employment by the employer on a prescribed vessel if:

 (a) the vessel is the subject of an opt‑in declaration; and

 (b) any of the conditions set out in subsection (3) is satisfied.

Constitutional conditions

 (3) For the purposes of paragraphs (1)(c) and (2)(b), the conditions are as follows:

 (a) the employer is a constitutional corporation;

 (b) the operator of the vessel is a constitutional corporation;

 (c) any of the following subparagraphs applies:

 (i) a constitutional corporation holds more than 50% of the legal ownership of the vessel;

 (ii) a constitutional corporation holds more than 50% of the beneficial ownership of the vessel;

 (iii) 2 or more constitutional corporations hold, in total, more than 50% of the legal ownership of the vessel;

 (iv) 2 or more constitutional corporations hold, in total, more than 50% of the beneficial ownership of the vessel;

 (d) the vessel is engaged in trade or commerce:

 (i) between Australia and places outside Australia; or

 (ii) among the States; or

 (iii) within a Territory, between a State and a Territory or between 2 Territories;

 (e) the vessel is not within the limits of a State or Territory;

 (f) the vessel is within the limits of a Territory.

 (4) Subparagraphs (3)(c)(i) to (iv) do not apply to a constitutional corporation that has no involvement, or negligible involvement, in the overall general control and management of the vessel.

Disregard conditions of declaration

 (5) For the purposes of this section, in determining whether a vessel is the subject of an opt‑in declaration, disregard any conditions of the declaration.

Note 1: For ***opt‑in declaration***, see section 25H.

Note 2: See also sections 25M and 25N (exemptions).

25D Transitional vessels

 (1) This Act applies to the employment of an employee on a vessel if:

 (a) the vessel is the subject of a transitional declaration; and

 (b) any of the conditions set out in subsection (3) is satisfied.

 (2) This Act applies to the employment of a trainee who, as required by his or her employer, is undergoing a training course in connection with, or for the purpose of, employment by the employer on a vessel if:

 (a) the vessel is the subject of a transitional declaration; and

 (b) any of the conditions set out in subsection (3) is satisfied.

Constitutional conditions

 (3) For the purposes of paragraphs (1)(b) and (2)(b), the conditions are as follows:

 (a) the employer is a constitutional corporation;

 (b) the operator of the vessel is a constitutional corporation;

 (c) any of the following subparagraphs applies:

 (i) a constitutional corporation holds more than 50% of the legal ownership of the vessel;

 (ii) a constitutional corporation holds more than 50% of the beneficial ownership of the vessel;

 (iii) 2 or more constitutional corporations hold, in total, more than 50% of the legal ownership of the vessel;

 (iv) 2 or more constitutional corporations hold, in total, more than 50% of the beneficial ownership of the vessel;

 (d) the vessel is engaged in trade or commerce:

 (i) between Australia and places outside Australia; or

 (ii) among the States; or

 (iii) within a Territory, between a State and a Territory or between 2 Territories;

 (e) the vessel is not within the limits of a State or Territory;

 (f) the vessel is within the limits of a Territory.

 (4) Subparagraphs (3)(c)(i) to (iv) do not apply to a constitutional corporation that has no involvement, or negligible involvement, in the overall general control and management of the vessel.

Note 1: For ***transitional declaration***, see Part 8 of Schedule 3 to the *Seafarers and Other Legislation Amendment Act 2016*.

Note 2: See also sections 25M and 25N (exemptions).

Division 3—Opt‑in declarations

25E Application for opt‑in declaration

 (1) A person may apply to the Commission for an opt‑in declaration that:

 (a) relates to a prescribed vessel; and

 (b) covers the employment on the vessel of:

 (i) all employees; or

 (ii) a specified group or specified groups of employees; or

 (iii) a specified employee or specified employees.

 (2) The applicant must be:

 (a) the owner or operator of the vessel; or

 (b) the employer of the employee or employees proposed to be covered by the declaration.

 (3) The application must:

 (a) be in writing; and

 (b) be in a form approved, in writing, by the Commission; and

 (c) nominate a number of days as the duration of the declaration; and

 (d) be accompanied by such information as is specified in the legislative rules; and

 (e) be accompanied by such documents (if any) as are specified in the legislative rules; and

 (f) be accompanied by the fee (if any) specified in the legislative rules.

 (4) The number of days nominated under paragraph (3)(c) must not be greater than 1,095.

 (5) The approved form of application may provide for verification by statutory declaration of statements in applications.

 (6) The approved form of application may require the applicant to state that the applicant took reasonable steps to inform:

 (a) each registered organisation (if any) that is entitled to represent the interests of employees employed on the vessel; and

 (b) the employees employed on the vessel;

of a proposal to make the application.

 (7) A fee specified under paragraph (3)(f) must not be such as to amount to taxation.

Renewal application

 (8) If:

 (a) when the application is made, the vessel is already the subject of an opt‑in declaration (the ***earlier declaration***); and

 (b) the application is made at least 28 days before the expiry of the earlier declaration;

the application may be expressed to be a renewal application.

 (9) If:

 (a) when the application is made, the vessel is already the subject of an opt‑in declaration (the ***earlier declaration***); and

 (b) the application is expressed to be a renewal application; and

 (c) the earlierdeclaration would, apart from this subsection, expire before the Commission makes, or refuses to make, an opt‑in declaration in response to the application;

the earlierdeclaration continues in force until the Commission makes, or refuses to make, an opt‑in declaration in response to the application.

 (10) Subsection (9) has effect subject to section 25J.

25F Further information

 (1) The Commission may, by written notice given to an applicant, require the applicant to give the Commission, within the period specified in the notice, further information in connection with the application.

 (2) If the applicant breaches the requirement, the Commission may, by written notice given to the applicant:

 (a) refuse to consider the application; or

 (b) refuse to take any action, or any further action, in relation to the application.

25G Withdrawal of application

 (1) An applicant may withdraw the application at any time before the Commission makes a decision on the application.

 (2) This Act does not prevent the applicant from making a fresh application.

 (3) If:

 (a) the applicant withdraws the application; and

 (b) the applicant has paid a fee in relation to the application;

the Commission must, on behalf of the Commonwealth, refund the application fee.

25H Opt‑in declaration

Scope

 (1) This section applies if an application under section 25E has been made for an opt‑in declaration that:

 (a) relates to a prescribed vessel; and

 (b) covers the employment on the vessel of:

 (i) all employees; or

 (ii) a specified group or specified groups of employees; or

 (iii) a specified employee or specified employees.

Declaration

 (2) After considering the application, the Commission must:

 (a) by writing, declare that the vessel is an opt‑in vessel for the purposes of this Act, and that the declaration covers the employment on the vessel of:

 (i) all employees; or

 (ii) a specified group or specified groups of employees; or

 (iii) a specified employee or specified employees; or

 (b) refuse to make such a declaration.

 (3) A declaration under subsection (2) is known as an ***opt‑in declaration***.

 (4) In deciding whether to make an opt‑in declaration, the Commission must have regard to:

 (a) the matters (if any) prescribed by the legislative rules; and

 (b) such other matters (if any) as the Commission considers relevant.

 (5) The Commission must not exercise the power under subsection (2) in a way that would be inconsistent with an obligation of Australia under an international agreement.

 (6) An opt‑in declaration is subject to the conditions (if any) set out in the declaration.

Duration

 (7) If:

 (a) the application is not expressed to be a renewal application; and

 (b) the Commission makes an opt‑in declaration in response to the application;

the opt‑in declaration:

 (c) comes into force on the day specified in the declaration; and

 (d) remains in force for the number of days specified in the declaration.

 (8) The day specified under paragraph (7)(c) must be later than the day on which the declaration is made.

 (9) If:

 (a) the application is expressed to be a renewal application; and

 (b) the Commission makes an opt‑in declaration in response to the application;

the opt‑in declaration:

 (c) comes into force immediately after the expiry of the opt‑in declaration that:

 (i) related to the vessel; and

 (ii) was in force when the application was made; and

 (d) remains in force for the number of days specified in the declaration.

 (10) Subsections (7) and (9) have effect subject to section 25J.

 (11) The number of days specified under paragraph (7)(d) or (9)(d) must be the same as the number of days nominated under paragraph 25E(3)(c), unless the applicant agrees to the specification of a different number of days.

Deadline

 (12) If:

 (a) the application is not expressed to be a renewal application; and

 (b) the Commission does not, within 28 days after:

 (i) receiving the application; or

 (ii) if the Commission has requested further information under section 25F in relation to the application—receiving that further information;

 make a decision under subsection (2) in relation to the application:

then:

 (c) the Commission is taken, at the end of that 28‑day period, to have made a declaration under subsection (2) that the vessel is an opt‑in vessel for the purposes of this Act; and

 (d) the declaration is taken to cover the employment on the vessel of the employees covered by the application; and

 (e) the declaration is taken to have specified under paragraph (7)(d) or (9)(d), as the case requires, the number of days nominated under paragraph 25E(3)(c).

Publication etc.

 (13) The Commission must:

 (a) give a copy of an opt‑in declaration to:

 (i) the owner and operator of the prescribed vessel to which the declaration relates; and

 (ii) the employer or employers of the employees covered by the declaration; and

 (b) publish the declaration on the Commission’s website.

Refusal

 (14) If the Commission decides to refuse to make an opt‑in declaration, the Commission must give written notice of the decision to the applicant.

25J Suspension or revocation of opt‑in declaration

 (1) If an opt‑in declaration is in force in relation to a prescribed vessel, the Commission may, by writing:

 (a) suspend the declaration for a specified period; or

 (b) revoke the declaration.

 (2) A suspension of an opt‑in declaration takes effect on the day specified in the instrument of suspension. The specified day must be later than the day on which the instrument of suspension is made.

 (3) A revocation of an opt‑in declaration takes effect on the day specified in the instrument of revocation. The specified day must be later than the day on which the instrument of revocation is made.

 (4) The Commission may exercise the power under subsection (1):

 (a) on its own initiative; or

 (b) on application by:

 (i) the owner or operator of the prescribed vessel to which the declaration relates; or

 (ii) the employer of any of the employees covered by the declaration.

Application

 (5) An application under paragraph (4)(b) must:

 (a) be in writing; and

 (b) be in a form approved, in writing, by the Commission.

 (6) The approved form of application may provide for verification by statutory declaration of statements in applications.

 (7) The approved form of application may require the applicant to state that the applicant took reasonable steps to inform:

 (a) each registered organisation (if any) that is entitled to represent the interests of employees employed on the vessel; and

 (b) the employees employed on the vessel;

of a proposal to make the application.

Criteria

 (8) In deciding whether to suspend or revoke an opt‑in declaration, the Commission must have regard to:

 (a) the matters (if any) prescribed by the legislative rules; and

 (b) if the declaration is subject to one or more conditions—whether there have been any contraventions of those conditions; and

 (c) such other matters (if any) as the Commission considers relevant.

Consultation

 (9) Before deciding whether to suspend or revoke an opt‑in declaration that relates to a prescribed vessel, the Commission must:

 (a) publish on its website a notice:

 (i) setting out the draft instrument of suspension or revocation; and

 (ii) setting out the reasons for the proposed suspension or revocation; and

 (iii) inviting persons to make submissions to the Commission about the draft instrument within 7 days after the notice is published; and

 (b) consider any submissions received within the 7‑day period mentioned in subparagraph (a)(iii).

Notification

 (10) Within 14 days after suspending or revoking an opt‑in declaration that relates to a prescribed vessel, the Commission must:

 (a) give a copy of the instrument of suspension or revocation to:

 (i) the owner of the vessel; and

 (ii) the operator of the vessel; and

 (iii) the employer of any of the employees covered by the declaration; and

 (iv) each person who made a submission under subsection (9) relating to the suspension or revocation; and

 (b) if the owner, operator, employer or person made a submission under subsection (9) objecting to the suspension or revocation—give the owner, operator, employer or person a statement setting out the reasons for the suspension or revocation.

Publication

 (11) If the Commission suspends or revokes an opt‑in declaration, the Commission must publish the instrument of suspension or revocation on the Commission’s website.

Suspension

 (12) An opt‑in declaration has no effect while it is suspended.

Refusal

 (13) If:

 (a) an application is made under paragraph (4)(b) for suspension or revocation of an opt‑in declaration; and

 (b) the Commission decides not to suspend or revoke the declaration;

the Commission must give written notice of the decision to the applicant.

25K Review of decisions

 Applications may be made to the AAT for review of a decision of the Commission under subsection 25H(2) or (6) or 25J(1).

25L Extended meaning of *owner*

 In this Division:

***owner*** of a vessel means:

 (a) the person who holds the whole of the legal ownership of the vessel; or

 (b) each of the persons who hold a part of the legal ownership of the vessel.

Division 4—Exemption of employment

25M Exemption of employment

Exemption

 (1) The Commission may make a written instrument exempting the employment on a particular vessel of:

 (a) all employees; or

 (b) a specified group or specified groups of employees; or

 (c) a specified employee or specified employees;

from the application of:

 (d) this Act; and

 (e) the *Seafarers Safety and Compensation Levies Act 2016*; and

 (f) the *Seafarers Safety and Compensation Levies Collection Act 2016*.

 (2) An exemption may be:

 (a) general; or

 (b) as otherwise provided in the instrument of exemption.

 (3) The Commission may make an instrument of exemption under subsection (1):

 (a) on its own initiative; or

 (b) on application by:

 (i) the owner or operator of the vessel to which the exemption relates; or

 (ii) the employer of the employee or employees covered by the proposed exemption.

 (4) If a person makes an application under paragraph (3)(b), the Commission may, by written notice given to the applicant, refuse the application.

 (5) In deciding whether to make an instrument of exemption under subsection (1), the Commission must have regard to:

 (a) the matters (if any) prescribed by the legislative rules; and

 (b) such other matters (if any) as the Commission considers relevant.

 (6) The Commission must not exercise the power under subsection (1) in a way that would be inconsistent with an obligation of Australia under an international agreement.

 (7) An exemption is subject to the conditions (if any) set out in the instrument of exemption.

Duration

 (8) An instrument of exemption made on the Commission’s own initiative:

 (a) comes into force on the day specified in the instrument of exemption; and

 (b) remains in force for:

 (i) one year; or

 (ii) if a shorter period is specified in the instrument of exemption—that period.

 (9) The day specified under paragraph (8)(a) must be later than the day on which the instrument of exemption is made.

 (10) If:

 (a) an application under paragraph (3)(b) is not expressed to be a renewal application; and

 (b) the Commission makes an instrument of exemption in response to the application;

the instrument of exemption:

 (c) comes into force on the day specified in the instrument of exemption; and

 (d) remains in force for:

 (i) one year; or

 (ii) if a shorter period is specified in the instrument of exemption—that period.

 (11) The day specified under paragraph (10)(c) must be later than the day on which the instrument of exemption is made.

 (12) If:

 (a) an application under paragraph (3)(b) is expressed to be a renewal application; and

 (b) the Commission makes an instrument of exemption in response to the application;

the instrument of exemption:

 (c) comes into force immediately after the expiry of the instrument of exemption that:

 (i) related to the vessel; and

 (ii) was in force when the application was made; and

 (d) remains in force for one year.

 (13) Subsections (9), (10) and (12) have effect subject to section 25Q.

Consultation

 (14) Before deciding whether to make an instrument of exemption under subsection (1) in relation to a vessel, the Commission must:

 (a) publish on its website a notice:

 (i) setting out the draft instrument of exemption; and

 (ii) setting out the reasons for the proposed exemption; and

 (iii) inviting persons to make submissions to the Commission about the draft instrument within 7 days after the notice is published; and

 (b) consider any submissions received within the 7‑day period mentioned in subparagraph (a)(iii).

Deadline

 (15) If:

 (a) a person makes an application under paragraph (3)(b) in relation to a vessel; and

 (b) the Commission does not, within 28 days after whichever is the later of the following:

 (i) the end of the 7‑day period mentioned in subparagraph (14)(a)(iii);

 (ii) if the Commission has requested further information under subsection 25P(9)—receiving that further information;

 either:

 (iii) exercise the power under subsection (1); or

 (iv) make a decision under subsection (4) to refuse the application;

the Commission is taken to have made a decision under subsection (4) at the end of that 28‑day period to refuse the application.

Notification

 (16) Within 14 days after making an instrument of exemption under subsection (1) that relates to a vessel, the Commission must:

 (a) give a copy of the instrument of exemption to:

 (i) the owner of the vessel; and

 (ii) the operator of the vessel; and

 (iii) the employer of any of the employees covered by the exemption; and

 (iv) each person who made a submission under subsection (14) relating to the exemption; and

 (b) if the owner, operator, employer or person made a submission under subsection (14) objecting to the exemption—give the owner, operator, employer or person a statement setting out the reasons for the exemption.

Publication

 (17) If the Commission makes an instrument of exemption under subsection (1), the Commission must publish the instrument of exemption on the Commission’s website.

25N Effect of exemption

 If an instrument of exemption is in force under section 25M in relation to a vessel:

 (a) this Act (other than this section); and

 (b) the *Seafarers Safety and Compensation Levies Act 2016*; and

 (c) the *Seafarers Safety and Compensation Levies Collection Act 2016*;

do not apply, to the extent stated in the instrument of exemption, in relation to the employment on the vessel of employees to whom the exemption applies.

25P Application for exemption

Scope

 (1) This section applies to an application under paragraph 25M(3)(b).

Form

 (2) The application must be:

 (a) in writing; and

 (b) in a form approved, in writing, by the Commission; and

 (c) accompanied by such information as is specified in the legislative rules; and

 (d) accompanied by such documents (if any) as are specified in the legislative rules; and

 (e) accompanied by the fee (if any) specified in the legislative rules.

 (3) The approved form of application may provide for verification by statutory declaration of statements in applications.

 (4) The approved form of application may require the applicant to state that the applicant took reasonable steps to inform:

 (a) each registered organisation (if any) that is entitled to represent the interests of employees employed on the relevant vessel; and

 (b) the employees employed on the relevant vessel;

of a proposal to make the application.

 (5) A fee specified under paragraph (2)(e) must not be such as to amount to taxation.

Renewal application

 (6) If:

 (a) when the application is made, the relevant vessel is already the subject of a section 25M exemption (the ***earlier exemption***); and

 (b) the application is made at least 28 days before the expiry of the instrument of the earlier exemption;

the application may be expressed to be a renewal application.

 (7) If:

 (a) when the application is made, the relevant vessel is already the subject of a section 25M exemption (the ***earlier exemption***); and

 (b) the application is expressed to be a renewal application; and

 (c) the instrument of the earlierexemption would, apart from this subsection, expire before the Commission makes, or refuses to make, an instrument of exemption in response to the application;

the instrument of the earlierexemption continues in force until the Commission makes, or refuses to make, an instrument of exemption in response to the application.

 (8) Subsection (7) has effect subject to section 25Q.

Further information

 (9) The Commission may, by written notice given to an applicant, require the applicant to give the Commission, within the period specified in the notice, further information in connection with the application.

 (10) If the applicant breaches the requirement, the Commission may, by written notice given to the applicant:

 (a) refuse to consider the application; or

 (b) refuse to take any action, or any further action, in relation to the application.

Withdrawal of application

 (11) An applicant may withdraw the application at any time before the Commission makes a decision on the application.

 (12) This Act does not prevent the applicant from making a fresh application.

 (13) If:

 (a) the applicant withdraws the application; and

 (b) the applicant has paid a fee in relation to the application;

the Commission must, on behalf of the Commonwealth, refund the application fee.

25Q Suspension or revocation of exemption

 (1) If an instrument of exemption is in force under section 25M in relation to a vessel, the Commission may, by writing:

 (a) suspend the instrument of exemption for a specified period; or

 (b) revoke the instrument of exemption.

 (2) A suspension of a section 25M exemption instrument takes effect on the day specified in the instrument of suspension. The specified day must be later than the day on which the instrument of suspension is made.

 (3) A revocation of a section 25M exemption instrument takes effect on the day specified in the instrument of revocation. The specified day must be later than the day on which the instrument of revocation is made.

 (4) The Commission may exercise the power under subsection (1):

 (a) on its own initiative; or

 (b) on application by:

 (i) the owner or operator of the vessel; or

 (ii) the employer of any of the employees covered by the exemption.

Criteria

 (5) In deciding whether to suspend or revoke a section 25M exemption instrument, the Commission must have regard to:

 (a) the matters (if any) prescribed by the legislative rules; and

 (b) if the exemption is subject to one or more conditions—whether there have been any contraventions of those conditions; and

 (c) such other matters (if any) as the Commission considers relevant.

Consultation

 (6) Before deciding whether to suspend or revoke a section 25M exemption instrument that relates to a vessel, the Commission must:

 (a) publish on its website a notice:

 (i) setting out the draft instrument of suspension or revocation; and

 (ii) setting out the reasons for the proposed suspension or revocation; and

 (iii) inviting persons to make submissions to the Commission about the draft instrument within 7 days after the notice is published; and

 (b) consider any submissions received within the 7‑day period mentioned in subparagraph (a)(iii).

Notification

 (7) Within 14 days after suspending or revoking a section 25M exemption instrument that relates to a vessel, the Commission must:

 (a) give a copy of the instrument of suspension or revocation to:

 (i) the owner of the vessel; and

 (ii) the operator of the vessel; and

 (iii) the employer of any of the employees covered by the exemption; and

 (iv) each person who made a submission under subsection (6) relating to the suspension or revocation; and

 (b) if the owner, operator, employer or person made a submission under subsection (6) objecting to the suspension or revocation—give the owner, operator, employer or person a statement setting out the reasons for the suspension or revocation.

Publication

 (8) If the Commission suspends or revokes a section 25M exemption instrument, the Commission must publish the instrument of suspension or revocation on the Commission’s website.

Suspension

 (9) A section 25M exemption instrument has no effect while it is suspended.

Refusal

 (10) If:

 (a) an application is made under paragraph (4)(b) for suspension or revocation of a section 25M exemption instrument; and

 (b) the Commission decides not to suspend or revoke the instrument;

the Commission must give written notice of the decision to the applicant.

25R Review of decisions

 (1) Applications may be made to the AAT for review of a decision of the Commission under subsection 25M(1), (4) or (7).

 (2) An application under subsection (1) may only be made if the decision was made in response to an application under paragraph 25M(3)(b).

 (3) Applications may be made to the AAT for review of a decision of the Commission under subsection 25Q(1).

25S Extended meaning of *owner*

 In this Division:

***owner*** of a vessel means:

 (a) the person who holds the whole of the legal ownership of the vessel; or

 (b) each of the persons who hold a part of the legal ownership of the vessel.

85 Paragraph 28(4)(a)

Before “to”, insert “if the employee has paid the cost of the medical treatment—”.

86 Paragraph 28(4)(c)

Omit “if that cost has not been paid and the employee, or the legal personal representative of the employee, does not claim the compensation—”, substitute “in any other case—”.

87 Paragraph 29(5)(e)

Omit “the Authority”, substitute “Comcare”.

88 Subsection 30(2)

Omit “$3,500”, substitute “$11,654.06”.

89 Subsection 31(14)

Omit “ship”, substitute “vessel”.

90 Subsections 38(1) and (2)

Repeal the subsections, substitute:

 (1) Compensation is not payable under this Division to an employee who has reached pension age.

 (2) However, if an employee who has reached the age that is one year before pension age suffers an injury:

 (a) subsection (1) does not apply; and

 (b) compensation is payable under this Division in respect of the injury:

 (i) to the extent that this Act (other than subsection (1)) allows; and

 (ii) for a maximum of 52 weeks (whether consecutive or not) during which the employee is incapacitated.

91 Subsection 39(7)

Repeal the subsection, substitute:

 (7) Subject to section 40, if:

 (a) the employee has a permanent impairment other than a hearing loss; and

 (b) the employer determines that the degree of permanent impairment is less than 10%;

an amount of compensation is not payable to the employee under this section.

 (7A) Subject to section 40, if:

 (a) the employee has a permanent impairment that is a hearing loss; and

 (b) the employer determines that the binaural hearing loss suffered by the employee is less than 5%;

an amount of compensation is not payable to the employee under this section.

92 Subsection 40(4)

After “an employee”, insert “(other than a hearing loss)”.

93 At the end of section 40

Add:

 (5) If a final assessment is made of the degree of permanent impairment of an employee constituted by a hearing loss, no further amounts of compensation are payable to the employee in respect of a subsequent increase in the hearing loss, unless the subsequent increase in the degree of binaural hearing loss is 5% or more.

94 Subsections 42(1) and (2)

Omit “The Authority”, substitute “Comcare”.

95 Subsection 42(3)

Omit “the Authority”, substitute “Comcare”.

96 Subsections 42(3) and (3A)

Repeal the subsections, substitute:

 (3) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, must be approved by the Minister.

 (3A) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, is a legislative instrument made by the Minister on the day on which the Guide, or variation or revocation, is approved by the Minister.

97 Subsection 42(6)

Omit “the Authority”, substitute “Comcare”.

98 Subsection 42(8)

Omit “The Authority”, substitute “Comcare”.

99 Subsection 44(2) (definition of *y [number of years]*)

Repeal the definition, substitute:

***y [number of years]*** means the number (calculated to 3 decimal places) worked out by dividing by 365 the number of days in the period beginning on the day after the date of the determination and:

 (a) if the employee is injured before reaching the age that is 2 years before pension age—ending on the day immediately before the day on which the employee reaches pension age; and

 (b) if the employee is injured on or after reaching the age that is 2 years before pension age—ending on the day immediately before the employee would cease to be entitled to receive compensation under section 31, 33, 34, 35 or 36.

100 Subparagraphs 53(d)(i), (ii), (iii) and (iv)

Omit “ship”, substitute “vessel”.

101 At the end of section 54

Add:

 (4) If:

 (a) an employee has suffered an injury in the course of his or her employment; and

 (b) that injury results in that employee’s death;

subsection (1) does not prevent a dependant of that employee bringing an action against the employer, or another employee, in respect of the death of the first‑mentioned employee.

 (5) Subsection (4) applies whether or not the deceased employee, before his or her death, had made an election under subsection 55(1).

102 At the end of section 55

Add:

 (6) The election by an employee under this section to institute an action or proceeding against the employer or another employee does not prevent the employee, before, or instead of, formally instituting such action or proceeding, doing any other thing that constitutes an action for non‑economic loss.

103 Section 56 (heading)

Repeal the heading, substitute:

56 Notice of common law claims against third party

104 Paragraph 56(1)(c)

Omit “institutes proceedings”, substitute “makes a claim”.

105 Subsection 56(1)

Omit “those proceedings” (first occurring), substitute “the claim”.

106 Subsection 56(1)

Omit “that those proceedings had been instituted”, substitute “of the claim”.

107 Section 57 (heading)

Repeal the heading, substitute:

57 Notice of common law claims against employer

108 Paragraph 57(1)(b)

Omit “institutes proceedings”, substitute “makes a claim”.

109 Subsection 57(1)

Omit “those proceedings” (first occurring), substitute “the claim”.

110 Subsection 57(1)

Omit “that those proceedings had been instituted”, substitute “of the claim”.

111 Subsection 58(3)

After “paid to”, insert “, or for the benefit of,”.

112 Subsection 58(5)

Omit “proceedings instituted”, substitute “a claim made”.

113 Subsection 58(5)

Omit “such proceedings”, substitute “such a claim”.

114 Subsection 58(6)

Repeal the subsection, substitute:

 (6) Subsection (4) does not apply in relation to damages if the damages were recovered:

 (a) as a result of a claim, or fresh claim, made by the employer under section 59 (whether or not that claim progressed to the formal institution of proceedings); or

 (b) as a result of the employer’s taking over the conduct of a claim under that section; or

 (c) as a result of a claim made by the employee as a result of an election by the employee under section 55; or

 (d) by way of settlement of such a claim or of such an action (whether or not that claim or that action progressed to the formal institution of proceedings).

115 Section 59 (heading)

Repeal the heading, substitute:

59 Common law claims against third parties

116 Paragraph 59(2)(b)

Omit “instituting proceedings, or taking over the conduct of proceedings”, substitute “making a claim or a fresh claim, or taking over the conduct of an existing claim,”.

117 Subsection 59(2)

Omit “institute proceedings or fresh proceedings”, substitute “make a claim, or a fresh claim,”.

118 Subsection 59(2)

Omit “take over the conduct of the proceedings”, substitute “take over the conduct of the existing claim”.

119 Paragraph 59(3)(b)

Omit “instituting proceedings, or taking over the conduct of proceedings”, substitute “making a claim or a fresh claim, or taking over the conduct of an existing claim,”.

120 Paragraph 59(3)(c)

Omit “proceedings”, substitute “a claim”.

121 Subparagraph 59(3)(c)(i)

Omit “have not been instituted”, substitute “has not been made”.

122 Subparagraph 59(3)(c)(i)

Omit “instituting the proceedings”, substitute “making the claim”.

123 Subparagraph 59(3)(c)(ii)

Omit “have been so instituted but have not been”, substitute “has been made, but has not been”.

124 Subsection 59(3)

Omit “institute proceedings or fresh proceedings”, substitute “make a claim, or a fresh claim,”.

125 Subsection 59(3)

Omit “take over the conduct of the proceedings”, substitute “take over the conduct of the existing claim”.

126 Subsections 59(4) to (9)

Repeal the subsections, substitute:

 (4) If the employer:

 (a) makes a claim or a fresh claim; or

 (b) takes over the conduct of an existing claim under subsection (2) or (3);

the employer must conduct the claim in the interests of the person in whose name the claim was made.

 (5) The employer is liable to pay all costs of, or incidental to, any claim taken over by it, being costs payable by the plaintiff in that claim, other than those costs unreasonably incurred by the plaintiff.

 (6) If the employer makes, or takes over the conduct of, a claim under this section, the employer may:

 (a) take whatever steps are appropriate to bring the claim to a conclusion; and

 (b) if the claim is before a court—subject to subsection (7), settle the proceedings, either with or without obtaining judgment; and

 (c) if:

 (i) the claim is before a court; and

 (ii) judgment has been obtained in the proceedings in favour of the plaintiff;

 take such steps as are necessary to enforce the judgment.

 (7) The employer may only settle the claim:

 (a) with the written consent of the employee or dependant in whose name the claim was made; or

 (b) without the consent of the employee or dependant in whose name the claim was made, if the employee or dependant withholds consent unreasonably.

 (8) Subject to subsection (7), if the employer requires the employee or dependant to sign any document relevant to a claim made, or taken over, by the employer under this section (including the settlement of the claim):

 (a) the employee or dependant must sign it; and

 (b) if he or she fails to do so—the court or tribunal in which the claim is made may direct that the document may be signed on his or her behalf by a person appointed by the employer for the purpose.

 (9) If the employer makes, or takes over the conduct of, a claim under this section:

 (a) the employee or dependant must comply with any reasonable requirement of the employer for the purposes of the claim; and

 (b) if the employee or dependant fails do so—the right of the employee or dependant to compensation under this Act in respect of the injury, loss, damage or death to which the proceedings relate is suspended until such time as the employee or dependant complies with that requirement.

127 Subsection 59(11)

Omit “in proceedings”, substitute “as a result of a claim”.

128 Subsection 59(11)

Omit “such proceedings”, substitute “such a claim”.

129 Paragraph 59(11)(a)

After “paid to”, insert “, or for the benefit of,”.

130 Paragraph 59(11)(a)

Omit “proceedings relate”, substitute “claim relates”.

131 Paragraph 59(11)(b)

Omit “those proceedings”, substitute “the claim”.

132 Paragraph 60(1)(d)

Omit “the proceedings instituted”, substitute “as a result of a claim made”.

133 Paragraph 60(1)(d)

Omit “in proceedings instituted”, substitute “as a result of a claim made”.

134 Subparagraphs 60(2)(b)(i) and (ii)

Omit “in proceedings instituted”, substitute “as a result of a claim made”.

135 Subsection 62(3)

Omit “ship” (wherever occurring), substitute “vessel”.

136 Paragraphs 63(2)(a) and (b)

Omit “the Authority”, substitute “Comcare”.

137 Subsections 71(1) and (2)

Omit “the Fund” (wherever occurring), substitute “Comcare”.

138 Paragraph 72(1)(b)

Omit “the Authority”, substitute “Comcare”.

139 Subsection 72(3)

Omit “the Authority”, substitute “Comcare”.

140 Paragraph 73(2)(c)

Omit “the Authority”, substitute “Comcare”.

141 Subsection 73(3)

Omit “the Authority”, substitute “Comcare”.

142 Paragraph 73A(1)(b)

Omit “the Authority”, substitute “Comcare”.

143 Subsection 73A(3)

Omit “the Authority”, substitute “Comcare”.

144 Section 74 (heading)

Repeal the heading, substitute:

74 Employer may seek review of Comcare’s decision

145 Section 74

Omit “the Authority”, substitute “Comcare”.

146 Section 75

Repeal the section, substitute:

75 Sections 72 to 74 (inclusive) not to apply to Comcare in its capacity as the default employer

 Sections 72 to 74 (inclusive) do not apply to Comcare in its capacity as an employer under subsection 4(3).

147 Subsection 76(1) (definition of *extension of time decision*)

Omit “the Authority”, substitute “Comcare”.

148 Subsections 78(4) and (5)

Repeal the subsections, substitute:

 (4) On receipt of a request, the employer may, for the purposes of this section, arrange with Comcare for a Comcare officer to assist the employer in reconsidering the determination under subsection (5).

 (5) If the employer receives a request, the employer must:

 (a) reconsider the determination; and

 (b) do so:

 (i) if the employer has made arrangements under subsection (4)—after making those arrangements; or

 (ii) otherwise—after receipt of the request.

149 Subsection 78(7)

Repeal the subsection.

150 Paragraph 79(1)(b)

Omit “the Authority”, substitute “Comcare”.

151 Subsection 79(4)

Omit “the Authority”, substitute “Comcare”.

152 Section 80 (heading)

Repeal the heading, substitute:

80 Employer may seek review of Comcare’s decision

153 Section 80

Omit “the Authority”, substitute “Comcare”.

154 Sections 81 and 82

Repeal the sections, substitute:

81 Sections 79 and 80 not to apply to Comcare in its capacity as the default employer

 Sections 79 and 80 do not apply to Comcare in its capacity as an employer under subsection 4(3).

82 Comcare officer to give copy of report to claimant

 A Comcare officer must give the claimant a copy of any report the officer gives to an employer in relation to the reconsideration of a determination under subsection 78(5).

155 Subsections 86(1) and (2)

Omit “the Fund” (wherever occurring), substitute “Comcare”.

156 Paragraph 89(4)(b)

Omit “the Fund”, substitute “Comcare”.

157 Paragraph 89(4)(c)

Repeal the paragraph, substitute:

 (c) the AAT Act has effect as if a reference to the person who made the reviewable decision were a reference to Comcare; and

158 Subsection 91(2)

Omit “determination, the employer is liable to reimburse the claimant for costs reasonably incurred by the claimant in connection with that proceeding.”, substitute:

 determination:

 (a) the employer is liable to reimburse the claimant for costs reasonably incurred by the claimant in connection with that proceeding; and

 (b) the AAT may tax those costs under section 69A of the AAT Act as if the AAT had, under this Act, ordered the employer to pay those costs to the claimant.

159 Part 7 (heading)

Repeal the heading, substitute:

Part 7—Compulsory insurance

160 Division 1 of Part 7 (heading)

Repeal the heading.

161 Subsection 93(1)

Omit “, other than the Fund,”.

162 Subparagraph 93(1)(b)(i)

Omit “the Authority”, substitute “Comcare”.

163 Paragraph 93(1)(c)

Omit “the Authority”, substitute “Comcare”.

164 At the end of section 93

Add:

 (7) This section does not apply to Comcare in its capacity as an employer under subsection 4(3).

165 Section 94 (heading)

Repeal the heading, substitute:

94 Employer to give details of insurance or indemnity arrangements to Comcare

166 Subsection 94(1)

Omit “the Authority”, substitute “Comcare”.

167 Section 94A (heading)

Repeal the heading, substitute:

94A Employer to notify Comcare of changes to, or cancellation or termination of, insurance or indemnity arrangements

168 Paragraph 94A(1)(c)

Omit “the Authority”, substitute “Comcare”.

169 Section 95 (heading)

Repeal the heading, substitute:

95 Comcare may require evidence from employer

170 Section 95

Omit “The Authority”, substitute “(1) Comcare”.

171 Section 95 (penalty)

Repeal the penalty.

172 At the end of section 95

Add:

 (2) A person commits an offence if:

 (a) the person is subject to a requirement under subsection (1); and

 (b) the person omits to do an act; and

 (c) the omission breaches the requirement.

Penalty: 20 penalty units.

 (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

173 Subsection 95B(7)

Repeal the subsection.

174 After section 95B

Insert:

95C Comcare to insure

 (1) Comcare must, on each day, have a policy of insurance or indemnity from an authorised insurer, so that Comcare is insured or indemnified for any amount of Comcare’s liability under this Act that exceeds:

 (a) $2 million; or

 (b) if another amount is prescribed by the legislative rules—that other amount;

for a single event which results in an injury to one or more employees.

 (2) Before making legislative rules prescribing an amount for the purposes of paragraph (1)(b), the Minister must consult:

 (a) Comcare; and

 (b) any organisations that:

 (i) represent employers or employees; and

 (ii) the Minister thinks appropriate.

 (3) A failure to consult as required by subsection (2) does not affect the validity of a legislative rule prescribing an amount for the purposes of paragraph (1)(b).

175 Divisions 2 and 3 of Part 7

Repeal the Divisions.

176 Part 8

Repeal the Part, substitute:

Part 8—Administration

103 Simplified outline of this Part

• The Commission’s functions include:

 (a) monitoring the operation of this Act; and

 (b) promoting high operational standards of claims management, and effective rehabilitation procedures, by employers; and

 (c) advising the Minister about the operation of this Act.

• The Commission may obtain information from an employer if the information is relevant to the compilation of statistics for injury prevention purposes.

• Comcare may obtain information from an employer if the information is relevant to a claim made by an employee of the employer.

• The Seafarers Rehabilitation and Compensation Account continues in existence as a Special Account under this Act.

104 Additional functions of Commission

 The Commission has the following functions:

 (a) to monitor the operation of this Act (other than section 95B);

 (b) to promote high operational standards of claims management, and effective rehabilitation procedures, by employers;

 (c) to co‑operate with other bodies or persons with the aim of reducing the incidence of injuries to employees;

 (d) to publish material relating to the functions referred to in paragraphs (a), (b) and (c);

 (e) to advise the Minister about:

 (i) anything relating to the operation of this Act; and

 (ii) other matters relating to the compensation and rehabilitation of employees.

105 Additional function of the Australian Maritime Safety Authority

 The Australian Maritime Safety Authority has the function of monitoring the operation of section 95B.

106 Power to obtain information

 (1) The Commission may, by written notice given to an employer, require the employer to:

 (a) give the Commission any documents or information (or both) that:

 (i) are specified in the notice; and

 (ii) are in the possession or control of the employer; and

 (iii) are relevant to the compilation of statistics for injury prevention purposes; and

 (b) do so within such reasonable period as is specified in the notice.

 (2) Comcare may, by written notice given to an employer, require the employer to:

 (a) give Comcare any documents or information (or both) that:

 (i) are specified in the notice; and

 (ii) are in the possession or control of the employer; and

 (iii) are relevant to a claim made by, or in relation to, an employee of the employer; and

 (b) do so within such reasonable period as is specified in the notice.

 (3) Comcare may, by written notice given to an employer, require the employer to:

 (a) give Comcare any documents or information (or both) that:

 (i) are specified in the notice; and

 (ii) are in the possession or control of the employer; and

 (iii) are relevant to the power conferred on Comcare by section 4A; and

 (b) do so within such reasonable period as is specified in the notice.

 (4) Comcare may, by written notice given to an employee, require the employee to:

 (a) give Comcare any documents or information (or both) that:

 (i) are specified in the notice; and

 (ii) are in the possession or control of the employee; and

 (iii) are relevant to the power conferred on Comcare by section 4A; and

 (b) do so within such reasonable period as is specified in the notice.

Offence

 (5) A person commits an offence if:

 (a) the person is subject to a requirement under subsection (1), (2) or (3); and

 (b) the person omits to do an act; and

 (c) the omission breaches the requirement.

Penalty: 20 penalty units.

 (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

 (7) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

 (8) Subsection (5) does not apply to Comcare in its capacity as an employer under subsection 4(3).

Note: This section constitutes authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

107 Seafarers Rehabilitation and Compensation Special Account

 (1) The special account established by the *Financial Management and Accountability (Establishment of Special Account) Determination 2002/06* continues in existence as a special account under this Act, under the name Seafarers Rehabilitation and Compensation Special Account.

 (2) The Seafarers Rehabilitation and Compensation Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

 (3) For the purposes of the *Public Governance, Performance and Accountability Act 2013*, the Seafarers Rehabilitation and Compensation Special Account is taken to have been established by this Act.

 (4) The Secretary of the Department is responsible for the Seafarers Rehabilitation and Compensation Special Account.

108 Credits to the Seafarers Rehabilitation and Compensation Special Account

 There must be credited to the Seafarers Rehabilitation and Compensation Special Account amounts equal to the following:

 (a) amounts of seafarers insurance levy collected under the *Seafarers Safety and Compensation Levies Collection Act 2016*;

 (b) amounts of late payment penalty collected under the *Seafarers Safety and Compensation Levies Collection Act 2016* in relation to seafarers insurance levy;

 (c) amounts collected after the commencement of this section under the repealed *Seafarers Rehabilitation and Compensation Levy Collection Act 1992*;

 (d) amounts paid to the Commonwealth for any of the purposes of the Seafarers Rehabilitation and Compensation Special Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

109 Purposes of the Seafarers Rehabilitation and Compensation Special Account

 The purposes of the Seafarers Rehabilitation and Compensation Special Account are as follows:

 (a) the payment of claims, or other amounts payable, by Comcare in its capacity as an employer under subsection 4(3);

 (b) the payment of any premium for a policy of insurance or indemnity for any amount of Comcare’s liability under this Act;

 (c) the payment of expenditure incurred in, or attributable to, the administration of this Act, so far as that administration concerns Comcare in its capacity as an employer under subsection 4(3);

 (d) the payment of expenditure incurred in, or attributable to, the administration of the *Seafarers Safety and Compensation Levies Collection Act 2016*, so far as that Act relates to seafarers insurance levy;

 (e) payment to persons from whom seafarers insurance levy was collected under the *Seafarers Safety and Compensation Levies Collection Act 2016*;

 (f) the payment of expenditure incurred in, or attributable to, the administration of the repealed *Seafarers Rehabilitation and Compensation Levy Collection Act 1992*;

 (g) payment to persons from whom levy was collected under the repealed *Seafarers Rehabilitation and Compensation Levy Collection Act 1992*;

 (h) meeting the expenses of administering the Seafarers Rehabilitation and Compensation Special Account.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013*.

177 Section 129 (heading)

Repeal the heading, substitute:

129 Subrogation of rights of actual employer to Comcare

178 Subsections 129(1) and (2)

Omit “the Fund” (wherever occurring), substitute “Comcare”.

179 Subsections 133(1) and (2)

Omit “the Authority” (wherever occurring), substitute “Comcare”.

180 Subsection 133(4)

Omit “The Authority”, substitute “Comcare”.

181 Subsection 133(5)

Omit “the Authority” (wherever occurring), substitute “Comcare”.

182 Subsections 134(2) and (4)

Omit “the Authority”, substitute “Comcare”.

183 Subsection 135(1)

Omit “the Authority”, substitute “Comcare”.

184 Subsection 135(2)

Omit “the Fund”, substitute “Comcare”.

185 Subsection 135(3)

Repeal the subsection, substitute:

 (3) Except as provided by:

 (a) the *Child Support (Registration and Collection) Act 1988*; or

 (b) the *Social Security Act 1991*; or

 (c) the *Family Law Act 1975*; or

 (d) regulations under the *Family Law Act 1975*;

any compensation payable under this Act is not subject to attachment.

186 Subsection 141(1)

Omit “prescribed fee”, substitute “fee prescribed by the legislative rules”.

187 Subsection 141(2)

Omit “regulations”, substitute “legislative rules”.

188 Subsection 141(2)

After “prescribed”, insert “by the legislative rules”.

189 After section 141

Insert:

142 Variation or revocation of instruments

 A provision of this Act that deals with the variation or revocation of an instrument does not, by implication, prevent the application of subsection 33(3) of the *Acts Interpretation Act 1901* to another instrument under this Act.

Work Health and Safety Act 2011

190 Section 4 (definition of *regulator*)

Repeal the definition, substitute:

***regulator*** means:

 (a) so far as this Act, other than:

 (i) subsection 38(5); or

 (ii) paragraph 72(1)(a); or

 (iii) paragraph 152(a); or

 (iv) a provision of the regulations prescribed for the purposes of this subparagraph;

 applies because of subsection 12(8A)—the Australian Maritime Safety Authority; or

 (b) otherwise—Comcare.

Note: See also the definition of ***this Act***.

191 After subsection 12(8)

Insert:

Maritime sector

 (8A) If:

 (a) the *Seafarers Rehabilitation and Compensation Act 1992* applies to the employment of an employee on a vessel; or

 (b) assuming that an employee was employed on a vessel, the *Seafarers Rehabilitation and Compensation Act 1992* would apply to the employment of the employee on the vessel;

this Act applies in relation to each of the following:

 (c) to the extent that a person is conducting a business or undertaking on the vessel—that person;

 (d) to the extent that a worker carries out work on the vessel in any capacity for a business or undertaking—that worker;

 (e) if work is carried out on the vessel for a business or undertaking—the vessel.

 (8B) Subsection (8A) has effect subject to section 640 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Note: Section 640 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* deals with the application of Commonwealth maritime legislation in the offshore area of a State or Territory.

 (8C) A corresponding WHS law does not apply to a person to the extent that this Act applies to the person because of subsection (8A).

 (8D) For the purposes of subsections (8A) and (8C), disregard paragraph 61AA(b) of the *Shipping Registration Act 1981*.

 (8E) For the purposes of subsection (8A) and (8C):

 (a) assume that:

 (i) an offshore floating storage or production unit; and

 (ii) an offshore industry mobile unit that is self‑propelled or under tow;

 were a vessel for the purposes of the *Seafarers Rehabilitation and Compensation Act 1992*; and

 (b) assume that an offshore industry mobile unit that is neither self‑propelled nor under tow were neither a vessel, nor a prescribed vessel, for the purposes of the *Seafarers Rehabilitation and Compensation Act 1992*; and

 (c) disregard paragraphs (h) and (i) of the definition of ***prescribed vessel*** in subsection 3A(1) of the *Seafarers Rehabilitation and Compensation Act 1992*.

 (8F) For the purposes of subsections (8A) and (8E), ***employee***, ***offshore floating storage or production unit***, ***offshore industry mobile unit*** and ***vessel*** have the same respective meanings as in the *Seafarers Rehabilitation and Compensation Act 1992*.

192 Section 12A (heading)

Repeal the heading, substitute:

12A Act does not apply to certain facilities

193 Subsection 12A(1)

Repeal the subsection.

194 Subsection 12A(2)

Omit “(2)”.

195 After subsection 274(2)

Insert:

 (2A) Subsection (2) does not apply to a code of practice that relates only to matters to which this Act applies because of subsection 12(8A).

 (2B) If a code of practice relates only to matters to which this Act applies because of subsection 12(8A), the Minister may only approve, vary or revoke the code of practice under subsection (1) of this section if the code of practice, variation or revocation was developed by a process that involved consultation with the Safety, Rehabilitation and Compensation Commission.

196 At the end of Part 2 of Schedule 2

Add:

2A Annual reports

 (1) The annual report given by the Chairperson of the Safety, Rehabilitation and Compensation Commission to the Minister under section 89S of the *Safety, Rehabilitation and Compensation Act 1988* for a financial year must include:

 (a) statistics, with appropriate details, of each of the following:

 (i) notifiable incidents of which the Australian Maritime Safety Authority is notified under section 38 during the financial year;

 (ii) all investigations conducted by the Australian Maritime Safety Authority during the financial year;

 (iii) all seizures made under section 175 or 176 during the financial year;

 (iv) all improvement notices issued under section 191 during the financial year;

 (v) all prohibition notices issued under section 195 during the financial year;

 (vi) all non‑disturbance notices issued under section 198 during the financial year;

 (vii) all remedial action taken under section 211 or 212 during the financial year;

 (viii) all written undertakings accepted by the Australian Maritime Safety Authority under section 216 during the financial year;

 (ix) all applications for internal review made under section 224 during the financial year;

 (x) all applications for external review made under section 229 during the financial year;

 (xi) all infringement notices given under section 243 during the financial year; and

 (b) details of prosecutions instituted under this Act during the financial year; and

 (c) any other matter prescribed.

 (2) For the purposes of subclause (1), disregard subsections 12(1) to (8).

 (3) The Australian Maritime Safety Authority must give the Safety, Rehabilitation and Compensation Commission such statistics and other information as the Commission requires to enable the Chairperson of the Commission to comply with subclause (1).

197 Clause 3 of Schedule 2

Before “The annual report”, insert “(1)”.

198 At the end of clause 3 of Schedule 2

Add:

 (2) For the purposes of subclause (1), disregard subsections 12(8A) to (8F).

199 At the end of Schedule 2

Add:

Part 5—Miscellaneous

5 Functions and powers of the Australian Maritime Safety Authority

 The Australian Maritime Safety Authority may perform a function, or exercise a power, under this Act outside Australia if the performance of the function, or the exercise of the power, relates to this Act so far as this Act applies because of subsection 12(8A).

6 Functions and powers of inspectors appointed by the Australian Maritime Safety Authority

 (1) An inspector appointed by the Australian Maritime Safety Authority must not perform a function, or exercise a power, under this Act unless the performance of the function, or the exercise of the power, relates to this Act so far as this Act applies because of subsection 12(8A).

 (2) An inspector appointed by the Australian Maritime Safety Authority may perform a function, or exercise a power, under this Act outside Australia if the performance of the function, or the exercise of the power, relates to this Act so far as this Act applies because of subsection 12(8A).

7 Australian Maritime Safety Authority and Comcare may share information

 (1) The Australian Maritime Safety Authority and Comcare may share information with each other to achieve the object of this Act so far as this Act applies because of subsection 12(8A).

 (2) Subsection (1) does not limit the application of paragraph 152(g).

Part 4—Comcare scheme

Division 1—Catastrophic injury

Safety, Rehabilitation and Compensation Act 1988

200 Subsection 4(1)

Insert:

***catastrophic injury*** means an injury, where the conditions specified in the legislative rules are satisfied.

***legislative rules*** means rules made under section 122A.

201 Subsection 29 (heading)

Repeal the heading, substitute:

29 Compensation for household services and attendant care services obtained as a result of a non‑catastrophic injury

202 Subsections 29(1) and (3)

After “injury”, insert “(other than a catastrophic injury)”.

203 After section 29

Insert:

29A Compensation for household services and attendant care services obtained as a result of a catastrophic injury

Household services

 (1) If, as a result of a catastrophic injury to an employee, the employee obtains household services that he or she reasonably requires, Comcare is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances.

 (2) Without limiting the matters that Comcare may take into account in determining the household services that are reasonably required in a particular case, Comcare must, in making such a determination, have regard to the following matters:

 (a) the extent to which household services were provided by the employee before the date of the catastrophic injury and the extent to which he or she is able to provide those services after that date;

 (b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;

 (c) the extent to which household services were provided by the persons referred to in paragraph (b) before the catastrophic injury;

 (d) the extent to which the persons referred to in paragraph (b), or any other members of the employee’s family, might reasonably be expected to provide household services for themselves and for the employee after the catastrophic injury;

 (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also subsection 4(2).

Attendant care services

 (3) If, as a result of a catastrophic injury to an employee, the employee obtains attendant care services that he or she reasonably requires, Comcare is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances.

 (4) Without limiting the matters that Comcare may take into account in determining the attendant care services that are reasonably required in a particular case, Comcare must, in making such a determination, have regard to the following matters:

 (a) the nature of the employee’s catastrophic injury and the degree to which that injury impairs his or her ability to provide for his or her personal care;

 (b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;

 (c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;

 (d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;

 (e) any assessment made in relation to the rehabilitation of the employee;

 (f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.

Note: In relation to paragraph (4)(f), see also subsection 4(2).

Recipient of compensation

 (5) An amount of compensation payable by Comcare under subsection (1) or (3) is payable:

 (a) if the employee has paid for the household services or attendant care services, as the case may be—to the employee; or

 (b) in any other case—to the person who provided those services.

 (6) If Comcare pays an amount under subsection (1) or (3) to a person who provided household services or attendant care services to an employee, the payment of the amount is, to the extent of the payment, a discharge of the liability of the employee to pay for those services.

204 Subsection 60(1) (definition of *determination*)

After “29,”, insert “29A,”.

205 At the end of Part IX

Add:

122A Legislative rules

 (1) The Minister may, by legislative instrument, make rules (***legislative rules***) prescribing matters:

 (a) required or permitted by this Act to be prescribed by the legislativerules; or

 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

 (2) To avoid doubt, the legislativerules may not do the following:

 (a) create an offence or civil penalty;

 (b) provide powers of:

 (i) arrest or detention; or

 (ii) entry, search or seizure;

 (c) impose a tax;

 (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

 (e) directly amend the text of this Act.

Division 2—Pension age

Safety, Rehabilitation and Compensation Act 1988

206 Subsection 4(1)

Insert:

***pension age*** has the meaning given by subsection 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*.

207 Subsection 23(1)

Omit “65”, substitute “pension age”.

208 Subsections 23(1A) and (1B)

Omit “63 suffers an injury (whether before or after the commencement of this subsection)”, substitute “the age that is 2 years before pension age suffers an injury”.

209 Subsection 30(3) (paragraph (a) of the definition of *number of days*)

Repeal the paragraph, substitute:

 (a) if the employee is injured before reaching the age that is 2 years before pension age—on the day immediately before the day on which the employee reaches pension age; and

210 Subsection 30(3) (paragraph (b) of the definition of *number of days*)

Omit “63 years of age”, substitute “the age that is 2 years before pension age”.

211 Subsection 137(5) (definition of *number of days*)

Omit “65 years of age”, substitute “pension age”.

Part 5—Work health and safety

Work Health and Safety Act 2011

212 Paragraphs 12(1)(a) and (b)

Repeal the paragraphs, substitute:

 (a) if the Commonwealth is conducting a business or undertaking—the Commonwealth;

 (b) if a public authority is conducting a business or undertaking—the public authority;

213 Paragraph 12(1)(c)

Omit “person is a worker and”, substitute “worker”.

214 Paragraph 12(1)(c)

Omit “that person”, substitute “that worker”.

215 Paragraph 12(1)(d)

Omit “person is a worker and”, substitute “worker”.

216 Paragraph 12(1)(d)

Omit “that person”, substitute “that worker”.

217 Paragraph 12(1)(e)

Omit “place (as defined for the purposes of section 8)”, substitute “workplace”.

218 Paragraph 12(1)(e)

Omit “that place”, substitute “that workplace”.

219 Paragraph 12(1)(f)

Omit “place (as defined for the purposes of section 8)”, substitute “workplace”.

220 Paragraph 12(1)(f)

Omit “that place”, substitute “that workplace”.

221 Subsection 12(3)

Omit “in relation”.

222 Paragraph 12(4)(b)

Omit “a person”, substitute “a worker”.

223 Paragraph 12(4)(b)

Omit “the person”, substitute “that worker”.

224 Paragraph 12(4)(c)

Omit “place (as defined for the purposes of section 8)”, substitute “workplace”.

225 Paragraph 12(4)(c)

Omit “that place”, substitute “that workplace”.

226 Subsections 12(5) and (9)

Omit “in relation”.

227 Subsection 74(1)

Omit “(1)”.

228 Subsection 74(2)

Repeal the subsection.

229 Section 93

Repeal the section, substitute:

93 Provisional improvement notice may include recommendations to remedy contravention

 A provisional improvement notice may include recommendations concerning the measures that may be taken:

 (a) to remedy the contravention to which the notice relates; or

 (b) to prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.

230 At the end of section 247

Add:

 (3) Neither a Justice of the High Court, nor a Judge or Justice of a court created by the Parliament, is in that capacity an officer of the Commonwealthfor the purposes of this Act.

 (4) A Head of Mission (within the meaning of the *Public Service Act 1999*) is not in that capacity an officer of the Commonwealthfor the purposes of this Act.

Schedule 3—Application and transitional provisions

Part 1—Introduction

1 Definitions

In this Schedule:

***transitional rules*** means rules made under item 64.

***transition time*** means the commencement of Part 3 of Schedule 2.

Part 2—Catastrophic injuries to seafarers

2 Application—catastrophic injury

(1) The amendments of section 43 of the *Seafarers Rehabilitation and Compensation Act 1992* made by this Act apply in relation to compensation in respect of a week beginning after the commencement of the first legislative rules made for the purposes of the definition of ***catastrophic injury*** in section 3 of that Act (as amended by this Act).

(2) Section 43A of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) applies in relation to compensation in respect of a week that begins after the commencement of the first legislative rules made for the purposes of the definition of ***catastrophic injury*** in section 3 of that Act (as amended by this Act).

Part 3—Implementation of amendments of the Maritime Labour Convention relating to insurance obligations of employers of seafarers

3 Application—compulsory insurance

Subsections 93(5) and (6) of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) apply in relation to an application made by an employer after the commencement of this item.

Part 4—Seacare scheme

4 Application—coverage of employees etc.

Despite the amendments of the *Seafarers Rehabilitation and Compensation Act 1992* made by items 19, 21, 23, 24, 28, 30, 34, 35, 36, 38, 41, 42, 44, 45, 50, 51, 53, 55, 60, 62, 63, 68, 70 to 80, 82, 83, 84, 91, 92, 93 and 100 to 135 of Schedule 2 to this Act, the *Seafarers Rehabilitation and Compensation Act 1992* continues to apply, in relation to:

 (a) an injury suffered by an employee before the transition time; or

 (b) the loss of, or damage to, property used by an employee, if the loss or damage occurred:

 (i) as a result of an accident that occurred before the transition time; and

 (ii) in the circumstances mentioned in section 27 of that Act; or

 (c) an injury suffered by an employee, where the injury happened at or after the transition time while the employee was travelling between his or her place of work or place of residence and any other place for a purpose that:

 (i) is referred to in sub‑subparagraph 9(2)(e)(vi)(A), (B), (C), (D) or (E) of that Act; and

 (ii) is in connection with a matter covered by paragraph (a) or (b) of this item; or

 (d) an injury suffered by an employee, where the injury happened at or after the transition time while the employee was at a place for a purpose that:

 (i) is referred to in sub‑subparagraph 9(2)(e)(vi)(A), (B), (C), (D) or (E) of that Act; and

 (ii) is in connection with a matter covered by paragraph (a) or (b) of this item;

as if those amendments had not been made.

5 Transitional—exemption of employment

(1) For the purposes of this item, an ***old exemption instrument*** means an instrument of exemption that was in force under subsection 20A(1) of the *Seafarers Rehabilitation and Compensation Act 1992* immediately before the transition time.

(2) The *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) has effect as if:

 (a) immediately after the transition time, the Commission had, on its own initiative, made an instrument (the ***deemed*** ***exemption instrument***)under subsection 25M(1) of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) in the same terms as the old exemption instrument; and

 (b) a reference in the deemed exemption instrument to the *Seafarers Rehabilitation and Compensation Levy Act 1992* were a reference to the *Seafarers Safety and Compensation Levies Act 2016*; and

 (c) a reference in the deemed exemption instrument to the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* were a reference to the *Seafarers Safety and Compensation Levies Collection Act 2016*.

(3) Subsections 25M(14) and (16) of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) do not apply to the deemed exemption instrument.

6 Application—funeral expenses

The amendment of subsection 30(2) of the *Seafarers Rehabilitation and Compensation Act 1992* made by this Act applies in relation to a death that occurred after the transition time.

7 Transitional—indexation

Section 23 of the *Seafarers Rehabilitation and Compensation Act 1992* applies in relation to the amount specified in subsection 30(2) of that Act (as amended by this Act) as if the reference in the definition of ***relevant year*** in subsection 23(1) of that Act to 1 July 1992 were a reference to 1 July 2018.

8 Application—compensation for injuries resulting in incapacity

The amendment of section 31 of the *Seafarers Rehabilitation and Compensation Act 1992* made by this Act applies in relation to a payment of compensation in respect of a week that began after the transition time.

9 Application—pension age

(1) The amendments of section 38 of the *Seafarers Rehabilitation and Compensation Act 1992* made by this Act apply in relation to a payment of compensation in respect of a week that began after the transition time.

(2) However, in the case of an employee who suffered an injury before the transition time, subitem (1) does not prevent a week from being counted for the purposes of subparagraph 38(2)(b)(ii) of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) even if the week began before the transition time.

(3) If:

 (a) an employee suffered an injury before the transition time; and

 (b) compensation is payable under Division 3 of Part 2 of the *Seafarers Rehabilitation and Compensation Act 1992* in respect of the injury for 52 weeks (whether consecutive or not) during which the employee is incapacitated; and

 (c) the last of those weeks (the ***final payment week***) ends before the employee reaches pension age (within the meaning of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act));

subsection 38(2) of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) has effect, in relation to the injury, as if the number of weeks mentioned in subparagraph (b)(ii) of that subsection were increased by the number of weeks in the period:

 (d) beginning immediately after the end of the final payment week; and

 (e) ending immediately before the employee reaches pension age (within the meaning of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act)).

10 Application—superannuation scheme

The amendment made by item 59 of Schedule 2 to this Act applies in relation to a payment of compensation in respect of a week that began after the transition time.

11 Application—reconsideration of decisions

The amendments of section 78 of the *Seafarers Rehabilitation and Compensation Act 1992* made by this Act apply in relation to a request made after the transition time.

12 Application—costs of proceedings before the Administrative Appeals Tribunal

The amendment of section 91 of the *Seafarers Rehabilitation and Compensation Act 1992* made by this Act applies in relation to proceedings instituted after the transition time.

Part 5—Winding‑up of old levy scheme

13 Application—repeal of old Levy Act

The repeal of the *Seafarers Rehabilitation and Compensation Levy Act 1992* by this Act does not apply in relation to seafarer berths on a prescribed ship on a day before the transition time.

14 Application—repeal of old Levy Collection Act

Despite the repeal of the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* by this Act, that Act continues to apply, in relation to:

 (a) levy imposed by the repealed *Seafarers Rehabilitation and Compensation Levy Act 1992*; and

 (b) returns relating to seafarer berths on a prescribed ship on a day before the transition time;

as if:

 (c) that repeal had not happened; and

 (d) a reference to the Compensation Act in the definitions of ***prescribed ship***,***seafarer***and ***seafarer berth*** in section 3 of the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* were read as a reference to the Compensation Act as in force before the transition time.

Part 6—Transition from old occupational health and safety scheme

Division 1—Introduction

15 Definitions

In this Part:

***AMSA*** means the Australian Maritime Safety Authority.

***notifiable incident*** has the same meaning as in the *Work Health and Safety Act 2011*.

***Occupational Health and Safety (Maritime Industry) Act 1993*** includes any instrument made under that Act.

***plant***:

 (a) in relation to duties imposed under the *Occupational Health and Safety (Maritime Industry) Act 1993* that continue to apply because of a provision of this Part—has the same meaning as in that Act; and

 (b) in relation to duties imposed under the *Work Health and Safety Act 2011*—has the same meaning as in that Act.

***residual operation of the Occupational Health and Safety (Maritime Industry) Act 1993*** means the operation of the *Occupational Health and Safety (Maritime Industry) Act 1993*:

 (a) in relation to actions and failures to act that occur before the transition time; and

 (b) to the extent that the *Occupational Health and Safety (Maritime Industry) Act 1993* continues to apply in relation to actions, and failures to act, that occur after the transition time because of a provision of this Part—in relation to those actions and failures to act.

***structure***:

 (a) in relation to duties imposed under the *Occupational Health and Safety (Maritime Industry) Act 1993* that continue to apply because of a provision of this Part—has the same meaning as in that Act; and

 (b) in relation to duties imposed under the *Work Health and Safety Act 2011*—has the same meaning as in that Act.

***substance***:

 (a) in relation to duties imposed under the *Occupational Health and Safety (Maritime Industry) Act 1993* that continue to apply because of a provision of this Part—has the same meaning as in that Act; and

 (b) in relation to duties imposed under the *Work Health and Safety Act 2011*—has the same meaning as in that Act.

***supply***:

 (a) in relation to duties imposed under the *Occupational Health and Safety (Maritime Industry) Act 1993* that continue to apply because of a provision of this Part—has the same meaning as in that Act; and

 (b) in relation to duties imposed under the *Work Health and Safety Act 2011*—has the same meaning as in that Act.

***Work Health and Safety Act 2011*** includes any instrument made under that Act.

Division 2—Application of old occupational health and safety scheme

16 Application of old occupational health and safety scheme to certain breaches etc.

(1) Despite the repeal of the *Occupational Health and Safety (Maritime Industry) Act 1993* by this Act, that Act continues in force (subject to this Schedule), in relation to a breach of that Act that:

 (a) occurred before the transition time; or

 (b) is alleged to have occurred before the transition time;

as if that repeal had not happened.

(2) However, if the action or failure to act that constitutes the breach continues after the transition time then, subject to any other item of this Schedule, the *Occupational Health and Safety (Maritime Industry) Act 1993* does not apply to that action or failure to act to the extent that it occurs after the transition time.

Division 3—Application of duties imposed under the Work Health and Safety Act 2011

17 Duties of designers

(1) Subject to this item, the duties imposed on a designer under section 22 of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act, do not apply in relation to any plant, substance or structure if:

 (a) the designer started (or started and completed) designing the plant, substance or structure before the transition time; and

 (b) before the transition time, the designer was not subject to any duties imposed under:

 (i) section 22 of the *Work Health and Safety Act 2011*; or

 (ii) an identical, or nearly identical, provision of a law of a State or Territory.

(2) For the purposes of subparagraph (1)(b)(ii), in determining whether a provision is identical, or nearly identical, to section 22 of the *Work Health and Safety Act 2011*, disregard sections 12 to 12E of that Act.

(3) If:

 (a) apart from this subitem, subitem (1) would apply to a designer; and

 (b) the designer started designing any plant, substance or structure before the transition time but has not completed the design by the second anniversary of the transition time;

then:

 (c) the designer will, in relation to the plant, substance or structure, cease to have the benefit of subitem (1); and

 (d) the designer must comply with the requirements of the *Work Health and Safety Act 2011* in relation to the duties of a designer.

(4) If:

 (a) apart from this subitem, subitem (1) would apply to a designer; and

 (b) the designer carries out any calculations, analysis, testing or examination that may be relevant to determining whether any plant, substance or structure is designed to be without risks to the health and safety of persons mentioned in paragraphs 22(2)(a) to (f) of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act;

then, despite subitem (1):

 (c) the duty imposed on the designer under paragraph 22(4)(b) of that Actapplies to the results of the calculations, analysis, testing or examination; and

 (d) to the extent that it relates to the results, subsection 22(5) of that Actapplies to the designer.

18 Duties of manufacturers

(1) Subject to this item, the duties imposed on a manufacturer under section 23 of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act, do not apply in relation to any plant, substance or structure if:

 (a) the manufacturer started (or started and completed) any process associated with the manufacture of the plant, substance or structure before the transition time; and

 (b) before the transition time, the manufacturer was not subject to any duties imposed under:

 (i) section 23 of the *Work Health and Safety Act 2011*; or

 (ii) an identical, or nearly identical, provision of a law of a State or Territory.

(2) For the purposes of subparagraph (1)(b)(ii), in determining whether a provision is identical, or nearly identical, to section 23 of the *Work Health and Safety Act 2011*, disregard sections 12 to 12E of that Act.

(3) Despite the repeal of the *Occupational Health and Safety (Maritime Industry) Act 1993*, the duties imposed on a manufacturer under sections 15 and 16 of that Act apply to and in relation to any plant or substance if the manufacturer started (or started and completed) any process associated with the manufacture of the plant or substance before the transition time.

(4) If a duty under the *Occupational Health and Safety (Maritime Industry) Act 1993* applies because of subitem (3), that Act applies in relation to a breach, or alleged breach, of that duty, despite the repeal of that Act.

(5) If:

 (a) apart from this subitem, subitem (1) would apply to a manufacturer; and

 (b) the manufacturer started any process associated with the manufacture of any plant, substance or structure before the transition time but has not completed the manufacture by the first anniversary of the transition time;

then:

 (c) the manufacturer will, in relation to the plant, substance or structure, cease to have the benefit of subitem (1); and

 (d) the manufacturer must comply with the requirements of the *Work Health and Safety Act 2011* in relation to the duties of a manufacturer.

(6) If:

 (a) apart from this subitem, subitem (1) would apply to a manufacturer; and

 (b) the manufacturer carries out any calculations, analysis, testing or examination that may be relevant to determining whether any plant, substance or structure is manufactured to be without risks to the health and safety of persons mentioned in paragraphs 23(2)(a) to (f) of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act;

then, despite subitem (1):

 (c) the duty imposed on the manufacturer under paragraph 23(4)(b) of that Actapplies to the results of the calculations, analysis, testing or examination; and

 (d) to the extent that it relates to the results, subsection 23(5) of that Actapplies to the manufacturer.

19 Duties of importers

(1) Subject to this item, the duties imposed on an importer under section 24 of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act, do not apply in relation to any plant, substance or structure if:

 (a) the importer started (or started and completed) any steps constituting the importation of the plant, substance or structure before the transition time; and

 (b) before the transition time, the importer was not subject to any duties imposed under:

 (i) section 24 of the *Work Health and Safety Act 2011*; or

 (ii) an identical, or nearly identical, provision of a law of a State or Territory.

(2) For the purposes of subparagraph (1)(b)(ii), in determining whether a provision is identical, or nearly identical, to section 24 of the *Work Health and Safety Act 2011*, disregard sections 12 to 12E of that Act.

(3) Despite the repeal of the *Occupational Health and Safety (Maritime Industry) Act 1993*, the duties imposed under sections 15 and 16 of that Acton an importer who is taken to be the manufacturer of any plant or substance because of section 17 of that Act apply to and in relation to the plant or substance if the importer started (or started and completed) any steps constituting the importation of the plant or substance before the transition time.

(4) If a duty under the *Occupational Health and Safety (Maritime Industry) Act 1993* applies because of subitem (3), that Actapplies in relation to a breach, or alleged breach, of that duty, despite the repeal of that Act.

(5) If:

 (a) apart from this subitem, subitem (1) would apply to an importer; and

 (b) the importer started any process associated with the importing of any plant, substance or structure before the transition time but has not completed the importing by the first anniversary of the transition time;

then:

 (c) the importer will, in relation to the plant, substance or structure, cease to have the benefit of subitem (1); and

 (d) the importer must comply with the requirements of the *Work Health and Safety Act 2011* in relation to the duties of an importer.

(6) If:

 (a) apart from this subitem, subitem (1) would apply to an importer; and

 (b) the importer carries out any calculations, analysis, testing or examination that may be relevant to determining whether any plant, substance or structure that is imported is without risks to the health and safety of persons mentioned in paragraphs 24(2)(a) to (f) of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act, or ensures that they have been carried out;

then, despite subitem (1):

 (c) the duty imposed on the importer under paragraph 24(4)(b) of that Actapplies to the results of the calculations, analysis, testing or examination; and

 (d) to the extent that it relates to the results, subsection 24(5) of that Actapplies to the importer.

20 Duties of suppliers

(1) Subject to this item, the duties imposed on a supplier under section 25 of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act, do not apply in relation to any plant, substance or structure if:

 (a) the supplier started (or started and completed) any process associated with the supply of the plant, substance or structure before the transition time; and

 (b) before the transition time, the supplier was not subject to any duties imposed under:

 (i) section 25 of the *Work Health and Safety Act 2011*; or

 (ii) an identical, or nearly identical, provision of a law of a State or Territory.

(2) For the purposes of subparagraph (1)(b)(ii), in determining whether a provision is identical, or nearly identical, to section 25 of the *Work Health and Safety Act 2011*, disregard sections 12 to 12E of that Act.

(3) Despite the repeal of the *Occupational Health and Safety (Maritime Industry) Act 1993*, the duties imposed under section 19 of that Act:

 (a) on a supplier; or

 (b) on a person who, because of section 20 of that Act, is taken to be a supplier;

apply to and in relation to any plant or substance if any process associated with the supply of the plant or substance was started (or started and completed) before the transition time.

(4) If a duty under the *Occupational Health and Safety (Maritime Industry) Act 1993* applies because of subitem (3), that Actapplies in relation to a breach, or alleged breach, of that duty, despite the repeal of that Act.

(5) If:

 (a) apart from this subitem, subitem (1) would apply to a supplier; and

 (b) the supplier started any process associated with the supply of any plant, substance or structure before the transition time but has not completed the supply by the first anniversary of the transition time;

then:

 (c) the supplier will, in relation to the plant, substance or structure, cease to have the benefit of subitem (1); and

 (d) the supplier must comply with the requirements of the *Work Health and Safety Act 2011* in relation to the duties of a supplier.

(6) If:

 (a) apart from this subitem, subitem (1) would apply to a supplier; and

 (b) the supplier carries out any calculations, analysis, testing or examination that may be relevant to determining whether any plant, substance or structure that is supplied is without risks to the health and safety of persons mentioned in paragraphs 25(2)(a) to (f) of the *Work Health and Safety Act 2011*, or ensures that they have been carried out;

then, despite subitem (1):

 (c) the duty imposed on the supplier under paragraph 25(4)(b) of the *Work Health and Safety Act 2011* applies to the results of the calculations, analysis, testing or examination; and

 (d) to the extent that it relates to the results, subsection 25(5) of the *Work Health and Safety Act 2011* applies to the supplier.

21 Duties of persons who install, construct or commission plant or structures

(1) In this item:

***OHS installer*** means a person who erects or installs plant.

***WHS installer*** means a person who conducts a business or undertaking that installs, constructs or commissions plant or a structure.

(2) Subject to this item, the duties imposed on a WHS installer under section 26 of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act, do not apply in relation to any plant or structure if:

 (a) the WHS installer started (or started and completed) any process associated with the installation, construction or commissioning of the plant or structure before the transition time; and

 (b) before the transition time, the WHS installer was not subject to any duties imposed under:

 (i) section 26 of the *Work Health and Safety Act 2011*; or

 (ii) an identical, or nearly identical, provision of a law of a State or Territory.

(3) For the purposes of subparagraph (2)(b)(ii), in determining whether a provision is identical, or nearly identical, to section 26 of the *Work Health and Safety Act 2011*, disregard sections 12 to 12E of that Act.

(4) Despite the repeal of the *Occupational Health and Safety (Maritime Industry) Act 1993*, the duties imposed on an OHS installer under section 22 of that Actapply to and in relation to any plant if the OHS installer started (or started and completed) any process associated with the installation or erection of the plant before the transition time.

(5) If a duty under the *Occupational Health and Safety (Maritime Industry) Act 1993* applies because of subitem (4), that Act applies in relation to a breach, or alleged breach, of that duty, despite the repeal of that Act.

(6) If:

 (a) apart from this subitem, subitem (3) would apply to a WHS installer; and

 (b) the WHS installer started any process associated with the installation, construction or commissioning of any plant or structure before the transition time but had not completed the installation, construction or commissioning by the second anniversary of the transition time;

then:

 (c) the WHS installer will, in relation to the plant or structure, cease to have the benefit of subitem (3); and

 (d) the WHS installer must comply with the requirements of the *Work Health and Safety Act 2011* in relation to the duties of a WHS installer.

Division 4—Notifiable incidents etc.

22 Notifiable incidents etc.

The *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act, applies in relation to a notifiable incident arising out of the conduct of a business or undertaking of which the person conducting the business or undertaking becomes aware after the transition time, even if the incident occurred before the transition time.

23 Accidents and dangerous occurrences

If, before the transition time, a person was required to maintain a record of an accident or dangerous occurrence under section 108 of the *Occupational Health and Safety (Maritime Industry) Act 1993* then, after the transition time, that section and any regulations made under it continue to apply in relation to the accident or dangerous occurrence.

Division 5—Work groups, health and safety representatives and committees

24 Designated work groups

Scope

(1) This item applies if a designated work group, as:

 (a) established under Division 1 of Part 3 of the *Occupational Health and Safety (Maritime Industry) Act 1993*; or

 (b) established and varied under that Division;

was in operation immediately before the transition time.

Transitional

(2) At the transition time, the designated work group is taken to have been determined as a work group under the *Work Health and Safety Act 2011*.

25 Health and safety representatives etc.

Scope

(1) This item applies if a person held office immediately before the transition time as a health and safety representative, or deputy health and safety representative, under the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Transitional

(2) At the transition time, the health and safety representative or deputy health and safety representative is taken to hold the corresponding office under the *Work Health and Safety Act 2011* (with a term of office of 3 years beginning on the day on which the person was last selected under the *Occupational Health and Safety (Maritime Industry) Act 1993*).

26 Health and safety committees

Scope

(1) This item applies if:

 (a) a health and safety committee established under section 73 of the *Occupational Health and Safety (Maritime Industry) Act 1993* in respect of employees on a prescribed ship (within the meaning of that Act) or a prescribed unit (within the meaning of that Act) was in operation immediately before the transition time; and

 (b) that ship or unit is a prescribed ship (within the meaning of the *Seafarers Rehabilitation and Compensation Act 1992* as in force before the commencement of this item).

Transitional

(2) At the transition time, the health and safety committee is taken to be a health and safety committee under the *Work Health and Safety Act 2011*.

(3) If, because of subitem (2), a health and safety committee established under the *Occupational Health and Safety (Maritime Industry) Act 1993* is taken to be a health and safety committee under the *Work Health and Safety Act 2011*, then, at the transition time, the membership of the committee for the purposes of the *Work Health and Safety Act 2011* is made up as follows:

 (a) each person who was a member of the committee immediately before the transition time is taken to be a member of the committee for the purposes of the *Work Health and Safety Act 2011*;

 (b) if there is a health and safety representative for the relevant work group—that representative, if he or she consents, is a member of the committee;

 (c) if there are 2 or more health and safety representatives for the relevant work group—those representatives may choose one or more of their number (who consent) to be members of the committee.

(4) Subitem (3) does not affect any right or power to change the constitution of the committee in accordance with section 76 of the *Work Health and Safety Act 2011*.

27 Processes to establish work groups etc.

(1) If a process or proceeding:

 (a) to establish or vary a designated work group; or

 (b) to select a health and safety representative or deputy health and safety representative; or

 (c) to establish a health and safety committee;

has been started (but not completed) under the *Occupational Health and Safety (Maritime Industry) Act 1993* before the transition time, the process or proceeding (and any flow‑on process or proceeding):

 (d) may be completed under that Act as if that Act were still in operation; and

 (e) will then have effect for the purposes of the *Work Health and Safety Act 2011*.

(2) Subitem (1) ceases to apply in relation to the selection of a health and safety representative, or a deputy health and safety representative, at the end of 3 months after the transition time (and any process or proceeding not completed at the end of that period will need to be recommenced under the *Work Health and Safety Act 2011*).

28 Training

(1) A person who has completed a course of training accredited for the purposes of section 47 of the *Occupational Health and Safety (Maritime Industry) Act 1993* is taken to have completed any training required under subsection 85(6) or 90(4) of the *Work Health and Safety Act 2011*, so far as that Act applies because of subsection 12(8A) of that Act.

(2) Subitem (1) ceases to apply at the end of 12 months after the transition time (and any relevant course of training under the *Occupational Health and Safety (Maritime Industry) Act 1993* will then cease to have effect for the purposes of the *Work Health and Safety Act 2011*).

29 Provisional improvement notices

(1) If a provisional improvement notice is in effect under section 58 of the *Occupational Health and Safety (Maritime Industry) Act 1993* immediately before the transition time:

 (a) that Act continues to apply in relation to the notice as if that Act had not been repealed; and

 (b) to the extent that the notice relates to a matter, that Act continues to apply in relation to the matter as if that Act had not been repealed.

(2) To avoid doubt, paragraph 160(c) of the *Work Health and Safety Act 2011* does not apply in relation to a provisional improvement notice that is in effect under the *Occupational Health and Safety (Maritime Industry) Act 1993* immediately before the transition time.

30 Disqualification

(1) If, immediately before the transition time, a person is disqualified under section 72 of the *Occupational Health and Safety (Maritime Industry) Act 1993* from being a health and safety representative for any designated work group, that person is taken to be disqualified from being a health and safety representative for the purposes of the *Work Health and Safety Act 2011* at the transition time.

(2) The period of the disqualification under the *Work Health and Safety Act 2011* is the balance of the period of disqualification under the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(3) If an application is made under section 65 of the *Work Health and Safety Act 2011* to disqualify a health and safety representative:

 (a) the exercise of powers and the performance of functions as a health and safety representative under the *Occupational Health and Safety (Maritime Industry) Act 1993* for an improper purpose are relevant in the determination of the application; and

 (b) the use or disclosure of information acquired as a health and safety representative under the *Occupational Health and Safety (Maritime Industry) Act 1993* for a purpose other than in connection with the role of health and safety representative (either under that Act or the *Work Health and Safety Act 2011*) is relevant in the determination of the application.

(4) This item applies to a deputy health and safety representative in the same way as it applies to a health and safety representative.

Division 6—AMSA and inspectors

31 Appointment

(1) At the transition time, a person who:

 (a) held office immediately before the transition time as an inspector under the *Occupational Health and Safety (Maritime Industry) Act 1993*; and

 (b) is a member of the staff of AMSA;

is taken to have been appointed by AMSA as an inspector under the *Work Health and Safety Act 2011*.

(2) If:

 (a) an identity card was held by an inspector under or for the purposes of the *Occupational Health and Safety (Maritime Industry) Act 1993* immediately before the transition time; and

 (b) the inspector is taken, under subitem (1), to have been appointed as an inspector under the *Work Health and Safety Act 2011*;

the identity card is taken:

 (c) to be an identity card given by the regulator under section 157 of the *Work Health and Safety Act 2011*; and

 (d) to comply with the requirements of subsection 157(1) of that Act in all respects.

32 Use of WHS functions and powers to enforce the *Occupational Health and Safety (Maritime Industry) Act 1993*

(1) An inspector appointed by AMSA may, after the transition time, perform a function or exercise a power under Division 3, 4 or 5 of Part 9 of the *Work Health and Safety Act 2011* in relation to anything arising in connection with the residual operation of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(2) The *Work Health and Safety Act 2011* applies in relation to the performance or exercise of such a function or power as if a reference to the *Work Health and Safety Act 2011* included a reference to the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(3) Without limiting subitem (2), a reference in the *Work Health and Safety Act 2011* to an offence against the *Work Health and Safety Act 2011* is taken to include a reference to an offence against the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(4) Any action taken, or information acquired, under the *Work Health and Safety Act 2011* or because of the operation of this item may be used in relation to the residual operation of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(5) To avoid doubt, the reference in section 188 of the *Work Health and Safety Act 2011* to the compliance powers of an inspector includes the functions and powers conferred on the inspector because of this item.

(6) This item does not affect or limit any action that may be taken under or with respect to the *Occupational Health and Safety (Maritime Industry) Act 1993* because of the residual operation of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

33 WHS inspectors may exercise functions and powers under the *Occupational Health and Safety (Maritime Industry) Act 1993*

An inspector appointed by AMSA may exercise the functions and powers of an investigator under the *Occupational Health and Safety (Maritime Industry) Act 1993* in connection with the residual operation of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

34 AMSA may use powers of investigation under the *Work Health and Safety Act 2011* for the *Occupational Health and Safety (Maritime Industry) Act 1993*

(1) AMSA may, after the transition time, exercise a power under section 155 of the *Work Health and Safety Act 2011* in relation to anything arising in connection with the residual operation of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(2) The *Work Health and Safety Act 2011* applies in relation to the exercise of the power as if a reference to the *Work Health and Safety Act 2011* included a reference to the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(3) Without limiting subitem (2):

 (a) a reference in the *Work Health and Safety Act 2011* to a contravention of that Act is taken to include a reference to a contravention of the *Occupational Health and Safety (Maritime Industry) Act 1993*; and

 (b) a reference in the *Work Health and Safety Act 2011* to an offence against that Act is taken to include a reference to an offence against the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(4) Any action taken or information acquired under the *Work Health and Safety Act 2011* or because of the operation of this item may be used in relation to the residual operation of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

(5) This item does not affect or limit any action that may be taken under or with respect to the *Occupational Health and Safety (Maritime Industry) Act 1993* because of the residual operation of the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Division 7—Enforcement measures

35 Prohibition notices

If a prohibition notice is in effect under section 93 of the *Occupational Health and Safety (Maritime Industry) Act 1993* immediately before the transition time:

 (a) the *Occupational Health and Safety (Maritime Industry) Act 1993* continues to apply in relation to the notice as if that Act had not been repealed; and

 (b) to the extent that the notice relates to a matter, the *Occupational Health and Safety (Maritime Industry) Act 1993* continues to apply in relation to the matter as if that Act had not been repealed.

36 Improvement notices

If an improvement notice is in effect under section 98 of the *Occupational Health and Safety (Maritime Industry) Act 1993* immediately before the transition time:

 (a) the *Occupational Health and Safety (Maritime Industry) Act 1993* continues to apply in relation to the notice as if that Act had not been repealed; and

 (b) to the extent that the notice relates to a matter, the *Occupational Health and Safety (Maritime Industry) Act 1993* continues to apply in relation to the matter as if that Act had not been repealed.

Division 8—Other matters

37 Exemptions

Scope

(1) This item applies in relation to an exemption under the *Occupational Health and Safety (Maritime Industry) Act 1993* that is of a class prescribed by the transitional rules for the purposes of this item (a ***preserved exemption***).

Transitional

(2) A preserved exemption has effect under the *Work Health and Safety Act 2011*, subject to any modifications of that Act in relation to preserved exemptions of that class made by the transitional rules.

38 Codes of practice

Scope

(1) This item applies in relation to any code of practice made under section 109 of the *Occupational Health and Safety (Maritime Industry) Act 1993*, as in force immediately before the transition time, that is prescribed by the transitional rules for the purposes of this item as a ***preserved code of practice***.

Transitional

(2) A preserved code of practice is taken to be a code of practice approved for the purposes of the *Work Health and Safety Act 2011* under section 274 of that Act.

(3) Subitem (2) ceases to have effect on the second anniversary of the transition time.

(4) This item does not affect the power of the Minister under section 274 of the *Work Health and Safety Act 2011* to vary or revoke a code of practice that is taken to have been approved because of subitem (2).

39 Offshore petroleum and greenhouse gas storage

For the purposes of section 640 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, ***Commonwealth maritime legislation*** is taken to include:

 (a) the *Occupational Health and Safety (Maritime Industry) Act 1993*; and

 (b) any subordinate legislation under that Act.

Part 7—Abolition of the Seafarers Safety, Rehabilitation and Compensation Authority

40 Designated provision

For the purposes of this Part, each of the following provisions of the *Seafarers Rehabilitation and Compensation Act 1992* is a ***designated provision***:

 (a) paragraph 29(5)(e);

 (b) section 42;

 (c) paragraph 63(2)(a);

 (d) paragraph 63(2)(b);

 (e) section 71;

 (f) section 72;

 (g) section 73;

 (h) section 73A;

 (i) section 74;

 (j) section 79;

 (k) section 80;

 (l) section 86;

 (m) section 93;

 (n) section 94;

 (o) section 94A;

 (p) section 95;

 (q) section 106;

 (r) section 129;

 (s) section 133;

 (t) section 134.

41 Transitional—certain acts of the Seafarers Safety, Rehabilitation and Compensation Authority to be attributed to the Safety, Rehabilitation and Compensation Commission etc.

Scope

(1) This item applies to anything done by, or in relation to, the Seafarers Safety, Rehabilitation and Compensation Authority before the transition time, otherwise than:

 (a) under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*; or

 (b) in connection with the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of that Act (when read together with repealed section 101 of that Act).

Attribution

(2) After the transition time, the thing has effect as if it had been done by, or in relation to, the Safety, Rehabilitation and Compensation Commission.

42 Transitional—certain acts of the Seafarers Safety, Rehabilitation and Compensation Authority to be attributed to Comcare etc.

Scope

(1) This item applies to anything done by, or in relation to, the Seafarers Safety, Rehabilitation and Compensation Authority before the transition time:

 (a) under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992* (other than section 106 of that Act); or

 (b) in connection with the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of that Act (when read together with repealed section 101 of that Act).

Attribution

(2) After the transition time, the thing has effect as if it had been done by, or in relation to, Comcare.

43 Substitution of the Safety, Rehabilitation and Compensation Commission as a party to certain pending proceedings

Scope

(1) This item applies if:

 (a) any proceedings to which the Seafarers Safety, Rehabilitation and Compensation Authority was a party were pending in any court or tribunal immediately before the transition time; and

 (b) the proceedings are not in connection with the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of the *Seafarers Rehabilitation and Compensation Act 1992* (when read together with repealed section 101 of that Act); and

 (c) the proceedings are not in connection with the Authority’s functions or powers under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*.

Substitution

(2) The Safety, Rehabilitation and Compensation Commission is substituted for the Seafarers Safety, Rehabilitation and Compensation Authority, from the transition time, as a party to the proceedings.

44 Substitution of Comcare as a party to certain pending proceedings

Scope

(1) This item applies if:

 (a) any proceedings to which the Seafarers Safety, Rehabilitation and Compensation Authority was a party were pending in any court or tribunal immediately before the transition time; and

 (b) the proceedings are in connection with:

 (i) the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of the *Seafarers Rehabilitation and Compensation Act 1992* (when read together with repealed section 101 of that Act); or

 (ii) the Authority’s functions or powers under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*.

Substitution

(2) Comcare is substituted for the Seafarers Safety, Rehabilitation and Compensation Authority, from the transition time, as a party to the proceedings.

45 Transitional—transfer of records to the Safety, Rehabilitation and Compensation Commission

Scope

(1) This item applies to any records or documents that:

 (a) were in the possession of the Seafarers Safety, Rehabilitation and Compensation Authority immediately before the transition time; and

 (b) are not in connection with the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of the *Seafarers Rehabilitation and Compensation Act 1992* (when read together with repealed section 101 of that Act); and

 (c) are not in connection with the Authority’s functions or powers under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*.

Transfer

(2) The records and documents are to be transferred to the Safety, Rehabilitation and Compensation Commission after the transition time.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

46 Transitional—transfer of records to Comcare

Scope

(1) This item applies to any records or documents that:

 (a) were in the possession of the Seafarers Safety, Rehabilitation and Compensation Authority immediately before the transition time; and

 (b) are in connection with:

 (i) the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of the *Seafarers Rehabilitation and Compensation Act 1992* (when read together with repealed section 101 of that Act); or

 (ii) the Authority’s functions or powers under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*.

Transfer

(2) The records and documents are to be transferred to Comcare after the transition time.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

47 Transitional—transfer of Ombudsman investigations to the Safety, Rehabilitation and Compensation Commission

If:

 (a) before the transition time, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to an action taken by the Seafarers Safety, Rehabilitation and Compensation Authority; and

 (b) the action was not taken in connection with the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of the *Seafarers Rehabilitation and Compensation Act 1992* (when read together with repealed section 101 of that Act); and

 (c) the action was not taken in connection with the Authority’s functions or powers under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*; and

 (d) immediately before the transition time, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the transition time as if the action had been taken by the Safety, Rehabilitation and Compensation Commission.

48 Transitional—transfer of Ombudsman investigations to Comcare

If:

 (a) before the transition time, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to an action taken by the Seafarers Safety, Rehabilitation and Compensation Authority; and

 (b) the action was taken in connection with:

 (i) the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of the *Seafarers Rehabilitation and Compensation Act 1992* (when read together with repealed section 101 of that Act); or

 (ii) the Authority’s functions or powers under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*; and

 (c) immediately before the transition time, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the transition time as if the action had been taken by Comcare.

49 References in certain instruments to the Seafarers Safety, Rehabilitation and Compensation Authority

Safety, Rehabilitation and Compensation Commission

(1) If:

 (a) an instrument was in force immediately before the transition time; and

 (b) a reference is made in the instrument to the Seafarers Safety, Rehabilitation and Compensation Authority; and

 (c) the reference is not in connection with the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of the *Seafarers Rehabilitation and Compensation Act 1992* (when read together with repealed section 101 of that Act); and

 (d) the reference is not in connection with the Authority’s functions or powers under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*; and

 (e) the instrument is an instrument covered by one or more of the following subparagraphs:

 (i) an instrument that was made by the Seafarers Safety, Rehabilitation and Compensation Authority;

 (ii) an instrument to which the Seafarers Safety, Rehabilitation and Compensation Authority was a party;

 (iii) an instrument that was given to, or in favour of, the Seafarers Safety, Rehabilitation and Compensation Authority;

 (iv) an instrument under which any right or liability accrues or may accrue to the Seafarers Safety, Rehabilitation and Compensation Authority;

 (v) any other instrument in which a reference is made to the Seafarers Safety, Rehabilitation and Compensation Authority;

the reference has effect after the transition time as if it were a reference to the Safety, Rehabilitation and Compensation Commission.

Comcare

(2) If:

 (a) an instrument was in force immediately before the transition time; and

 (b) a reference is made in the instrument to the Seafarers Safety, Rehabilitation and Compensation Authority; and

 (c) the reference is in connection with:

 (i) the Authority’s capacity as an employer under repealed subsection 4(2) or (3) of the *Seafarers Rehabilitation and Compensation Act 1992* (when read together with repealed section 101 of that Act); or

 (ii) the Authority’s functions or powers under a designated provision of the *Seafarers Rehabilitation and Compensation Act 1992*; and

 (d) the instrument is an instrument covered by one or more of the following subparagraphs:

 (i) an instrument that was made by the Seafarers Safety, Rehabilitation and Compensation Authority;

 (ii) an instrument to which the Seafarers Safety, Rehabilitation and Compensation Authority was a party;

 (iii) an instrument that was given to, or in favour of, the Seafarers Safety, Rehabilitation and Compensation Authority;

 (iv) an instrument under which any right or liability accrues or may accrue to the Seafarers Safety, Rehabilitation and Compensation Authority;

 (v) any other instrument in which a reference is made to the Seafarers Safety, Rehabilitation and Compensation Authority;

the reference has effect after the transition time as if it were a reference to Comcare.

Definition

(3) In this item:

***instrument*** includes:

 (a) a contract, deed, undertaking or agreement; and

 (b) a notice, authority, order or instruction; and

 (c) an instrument made under an Act or under regulations;

but does not include:

 (d) an Act; or

 (e) a legislative instrument; or

 (f) an instrument made under this Act; or

 (g) an instrument made under the *Seafarers Rehabilitation and Compensation Act 1992*.

50 Transitional—transfer of money or investments to Comcare

Scope

(1) This item applies to any money or investments that were held by the Seafarers Safety, Rehabilitation and Compensation Authority immediately before the transition time for the benefit of a person under the *Seafarers Rehabilitation and Compensation Act 1992*.

Transfer

(2) The money and investments are to be:

 (a) transferred to Comcare after the transition time; and

 (b) held by Comcare for the benefit of the person under, and subject to, the *Seafarers Rehabilitation and Compensation Act 1992*.

(3) No stamp duty or other tax is payable under a law of a State or a Territory in respect of a transfer under subitem (2).

51 Transitional—information‑gathering notices

Scope

(1) This item applies if, before the transition time:

 (a) a notice was given to an employer by the Seafarers Safety, Rehabilitation and Compensation Authority under subsection 106(1) or (2) of the *Seafarers Rehabilitation and Compensation Act 1992*; and

 (b) the employer had not complied with the notice.

Transitional

(2) Despite the repeal of section 106 of the *Seafarers Rehabilitation and Compensation Act 1992* by this Act:

 (a) that section continues in force in relation to the notice; and

 (b) the notice continues in force;

as if:

 (c) at the time when the notice was given, a reference in that section to the Seafarers Safety, Rehabilitation and Compensation Authority were a reference to Comcare; and

 (d) the notice had been given to the employer by Comcare; and

 (e) a reference in the notice to the Seafarers Safety, Rehabilitation and Compensation Authority were a reference to Comcare; and

 (f) that repeal had not happened.

52 Final annual report of the Seafarers Safety, Rehabilitation and Compensation Authority

(1) The Chairperson of the Safety, Rehabilitation and Compensation Commission must prepare and give to the Minister, for presentation to the Parliament, a report (the ***final report***) on the activities of the Seafarers Safety, Rehabilitation and Compensation Authority during the final reporting period.

(2) Sections 39, 40, 42, 43 and 46 of the *Public Governance, Performance and Accountability Act 2013*, and rules made for the purposes of those sections, apply subject to this item in relation to the Seafarers Safety, Rehabilitation and Compensation Authority and the final reporting period as if:

 (a) references in those sections and rules to an annual report for a Commonwealth entity were references to the final report; and

 (b) references in those sections and rules to a reporting period for a Commonwealth entity were references to the final reporting period; and

 (c) references in those sections and rules to a Commonwealth entity were references to the Seafarers Safety, Rehabilitation and Compensation Authority; and

 (d) references in those sections and rules to the accountable authority for a Commonwealth entity were references to the Chairperson of the Safety, Rehabilitation and Compensation Commission; and

 (e) references in those sections and rules to the responsible Minister for a Commonwealth entity were references to the Minister.

(3) The Chairperson of the Safety, Rehabilitation and Compensation Commission must give the final report to the Minister by the 15th day of the fourth month after the end of the final reporting period. The Minister may grant an extension of time in special circumstances.

(4) The Minister must table the final report in each House of the Parliament as soon as practicable.

(5) The Safety, Rehabilitation and Compensation Commission must publish the final report on its website as soon as practicable after the report is tabled in the House of Representatives.

(6) Section 17A of the *Public Governance, Performance and Accountability Rule 2014* does not apply to the cessation of the existence of the Seafarers Safety, Rehabilitation and Compensation Authority.

(7) In this item:

***final reporting period*** means the financial year ending immediately before the transition time.

53 Annual report—occupational health and safety

If, as at the transition time, the Seafarers Rehabilitation and Compensation Authority had not prepared a report under section 114 of the *Occupational Health and Safety (Maritime Industry) Act 1993* in relation to a financial year that ended before the transition time, then, despite the repeal of that Act by this Act, that section continues to apply, in relation to the financial year, as if:

 (a) that repeal had not happened; and

 (b) the reference in subsection (1) of that section to the Authority were a reference to the Safety, Rehabilitation and Compensation Commission.

Part 8—Coverage of employees by the seacare scheme

54 Definitions

In this Part:

***Commission*** means the Safety, Rehabilitation and Compensation Commission.

Note: The Commission is established by section 89A of the *Safety, Rehabilitation and Compensation Act 1988*.

***operator*** of a vessel means:

 (a) a person with overall general control and management of the vessel; or

 (b) a person who has assumed responsibility for the vessel from:

 (i) a person referred to in paragraph (a); or

 (ii) a person who has a legal or beneficial interest in the vessel.

***owner*** of a vessel means:

 (a) the person who holds the whole of the legal ownership of the vessel; or

 (b) each of the persons who hold a part of the legal ownership of the vessel.

***registered organisation*** means an organisation registered under the *Fair Work (Registered Organisations) Act 2009*.

***transitional declaration*** means a declaration under item 58.

***vessel*** means any kind of vessel used in navigation by water, however propelled or moved, and includes:

 (a) a barge, lighter or other floating vessel; and

 (b) an air‑cushion vehicle, or other similar craft, used wholly or primarily in navigation by water.

55 Application for transitional declaration

(1) The owner or operator of a vessel may apply to the Commission for a transitional declaration in relation to the vessel.

(2) The application must:

 (a) be in writing; and

 (b) be in a form approved, in writing, by the Commission; and

 (c) be accompanied by such information as is specified in the transitional rules; and

 (d) be accompanied by such documents (if any) as are specified in the transitional rules; and

 (e) be accompanied by the fee (if any) specified in the transitional rules.

(3) The approved form of application may provide for verification by statutory declaration of statements in applications.

(4) The approved form of application may require the applicant to state that the applicant took reasonable steps to inform:

 (a) each registered organisation (if any) that is entitled to represent the interests of employees employed on the vessel; and

 (b) the employees employed on the vessel;

of a proposal to make the application.

(5) A fee specified under paragraph (2)(e) must not be such as to amount to taxation.

Renewal application

(6) If:

 (a) when the application is made, the vessel is already the subject of a transitional declaration (the ***earlier declaration***); and

 (b) the application is made:

 (i) at least 28 days before the expiry of the earlier declaration; or

 (ii) if a later time is allowed by the Commission—before that later time;

the application may be expressed to be a renewal application.

(7) If:

 (a) when the application is made, the vessel is already the subject of a transitional declaration (the ***earlier declaration***); and

 (b) the application is expressed to be a renewal application; and

 (c) the earlierdeclaration would, apart from this subitem, expire before the Commission makes, or refuses to make, a transitional declaration in response to the application;

the earlierdeclaration continues in force until the Commission makes, or refuses to make, a transitional declaration in response to the application.

(8) Subitem (7) has effect subject to item 59.

Timing of application

(9) The application must be made during the period:

 (a) beginning at the commencement of this item; and

 (b) ending 6 months after the transition time;

unless the application is expressed to be a renewal application.

56 Further information

(1) The Commission may, by written notice given to an applicant, require the applicant to give the Commission, within the period specified in the notice, further information in connection with the application.

(2) If the applicant breaches the requirement, the Commission may, by written notice given to the applicant:

 (a) refuse to consider the application; or

 (b) refuse to take any action, or any further action, in relation to the application.

57 Withdrawal of application

(1) An applicant may withdraw the application at any time before the Commission makes a decision on the application.

(2) This Act does not prevent the applicant from making a fresh application.

(3) If:

 (a) the applicant withdraws the application; and

 (b) the applicant has paid a fee in relation to the application;

the Commission must, on behalf of the Commonwealth, refund the application fee.

58 Transitional declaration

Scope

(1) This item applies if an application under item 55 has been made for a transitional declaration in relation to a vessel.

Declaration

(2) After considering the application, the Commission must:

 (a) by writing, declare that the vessel is a transitional vessel for the purposes of this Act; or

 (b) refuse to make such a declaration.

(3) A declaration under subitem (2) is known as a ***transitional declaration***.

(4) The Commission must not make a transitional declaration in relation to the vessel unless the Commission is satisfied that:

 (a) at any time during the 28‑day period ending immediately before the start of the day this Act received the Royal Assent, the *Seafarers Rehabilitation and Compensation Act 1992* applied to the employment of one or more employees on the vessel; and

 (b) at any time during the 28‑day period ending immediately before the start of the day this Act received the Royal Assent, an employer of one or more employees on the vessel:

 (i) had a policy of insurance or indemnity; or

 (ii) was a member of a protection and indemnity association or an employers’ mutual indemnity association;

 referred to in section 93 of the *Seafarers Rehabilitation and Compensation Act 1992* so that the employer was insured or indemnified for the full amount of the employer’s liability under that Act to all employees employed by the employer on the vessel.

(5) In paragraphs (4)(a) and (b), ***employed***, ***employee***, ***employer*** and ***employment*** have the same respective meanings as in the *Seafarers Rehabilitation and Compensation Act 1992* as in force immediately before the start of the day this Act received the Royal Assent.

(6) The Commission must not exercise the power under subitem (2) in a way that would be inconsistent with an obligation of Australia under an international agreement.

Duration

(7) If:

 (a) the application is not expressed to be a renewal application; and

 (b) the Commission makes a transitional declaration in response to the application;

the transitional declaration:

 (c) comes into force at the time specified in the declaration; and

 (d) remains in force for 3 years.

(8) The time specified under paragraph (7)(c):

 (a) must be later than the time when the declaration is made; and

 (b) must not be earlier than the transition time.

(9) If:

 (a) the application is expressed to be a renewal application; and

 (b) the Commission makes a transitional declaration in response to the application;

the transitional declaration:

 (c) comes into force immediately after the expiry of the transitional declaration that:

 (i) related to the vessel; and

 (ii) was in force when the application was made; and

 (d) remains in force for 3 years.

(10) Subitems (7) and (9) have effect subject to item 59.

Deadline

(11) If:

 (a) the application is not expressed to be a renewal application; and

 (b) the Commission does not, within 28 days after:

 (i) receiving the application; or

 (ii) if the Commission has requested further information under item 56 in relation to the application—receiving that further information;

 make a decision under subitem (2) in relation to the application;

the Commission is taken, at the end of that 28‑day period, to have made a declaration under subitem (2) that the vessel is a transitional vessel for the purposes of this Act.

Publication etc.

(12) The Commission must:

 (a) give a copy of a transitional declaration to the owner and operator of the vessel to which the declaration relates; and

 (b) publish the declaration on the Commission’s website.

Refusal

(13) If the Commission decides to refuse to make a transitional declaration, the Commission must give written notice of the decision to the applicant.

59 Suspension or revocation of transitional declaration

(1) If a transitional declaration is in force in relation to a vessel, the Commission may, by writing:

 (a) suspend the declaration for a specified period; or

 (b) revoke the declaration.

(2) A suspension of a transitional declaration takes effect on the day specified in the instrument of suspension. The specified day must be later than the day on which the instrument of suspension is made.

(3) A revocation of a transitional declaration takes effect on the day specified in the instrument of revocation. The specified day must be later than the day on which the instrument of revocation is made.

(4) The Commission may exercise the power under subitem (1):

 (a) on its own initiative; or

 (b) on application by the owner or operator of the vessel to which the declaration relates.

(5) An application under paragraph (4)(b) must:

 (a) be in writing; and

 (b) be in a form approved, in writing, by the Commission.

(6) The approved form of application may provide for verification by statutory declaration of statements in applications.

(7) The approved form of application may require the applicant to state that the applicant took reasonable steps to inform:

 (a) each registered organisation (if any) that is entitled to represent the interests of employees employed on the vessel; and

 (b) the employees employed on the vessel;

of a proposal to make the application.

Criteria

(8) In deciding whether to suspend or revoke a transitional declaration, the Commission must have regard to:

 (a) the matters (if any) prescribed by the transitional rules; and

 (b) such other matters (if any) as the Commission considers relevant.

Consultation

(9) Before deciding whether to suspend or revoke a transitional declaration that relates to a vessel, the Commission must:

 (a) publish on its website a notice:

 (i) setting out the draft instrument of suspension or revocation; and

 (ii) setting out the reasons for the proposed suspension or revocation; and

 (iii) inviting persons to make submissions to the Commission about the draft instrument within 7 days after the notice is published; and

 (b) consider any submissions received within the 7‑day period mentioned in subparagraph (a)(iii).

Notification

(10) Within 14 days after suspending or revoking a transitional declaration that relates to a vessel, the Commission must:

 (a) give a copy of the instrument of suspension or revocation to:

 (i) the owner of the vessel; and

 (ii) the operator of the vessel; and

 (iii) each person who made a submission under subitem (9) relating to the suspension or revocation; and

 (b) if the owner, operator or person made a submission under subitem (9) objecting to the suspension or revocation—give the owner, operator or person a statement setting out the reasons for the suspension or revocation.

Publication

(11) If the Commission suspends or revokes a transitional declaration, the Commission must publish the instrument of suspension or revocation on the Commission’s website.

Suspension

(12) A transitional declaration has no effect while it is suspended.

Refusal

(13) If:

 (a) an application is made under paragraph (4)(b) for suspension or revocation of a transitional declaration; and

 (b) the Commission decides not to suspend or revoke the declaration;

the Commission must give written notice of the decision to the applicant.

60 Review of decisions

Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Commission under subparagraph 55(6)(b)(ii) or subitem 58(2) or 59(1).

Part 9—Comcare scheme

Division 1—Catastrophic injury

61 Application—catastrophic injury

(1) The amendments of section 29 of the *Safety, Rehabilitation and Compensation Act 1988* made by this Act apply in relation to compensation in respect of a week beginning after the commencement of the first legislative rules made for the purposes of the definition of ***catastrophic injury*** in subsection 4(1) of that Act (as amended by this Act).

(2) Section 29A of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) applies in relation to compensation in respect of a week that begins after the commencement of the first legislative rules made for the purposes of the definition of ***catastrophic injury*** in subsection 4(1) of that Act (as amended by this Act).

Division 2—Pension age

62 Application—pension age

(1) The amendments of section 23 of the *Safety, Rehabilitation and Compensation Act 1988* made by this Act apply in relation to a payment of compensation in respect of a week that began after the commencement of this item.

(2) However:

 (a) in the case of an employee who suffered an injury before the commencement of this item, subitem (1) does not prevent a week from being counted for the purposes of subparagraph 23(1A)(b)(ii) of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) even if the week began before the commencement of this item; and

 (b) in the case of a Parliamentary Service employee who suffered an injury before the commencement of this item, subitem (1) does not prevent a week from being counted for the purposes of subparagraph 23(1B)(b)(ii) of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) even if the week began before the commencement of this item.

(3) If:

 (a) an employee suffered an injury before the commencement of this item; and

 (b) compensation is payable under section 19, 20, 21, 21A or 22 of the *Safety, Rehabilitation and Compensation Act 1988* in respect of the injury for 104 weeks (whether consecutive or not) during which the employee is incapacitated; and

 (c) the last of those weeks (the ***final payment week***) ends before the employee reaches pension age (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act));

subsection 23(1A) of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) has effect, in relation to the injury, as if the number of weeks mentioned in subparagraph (b)(ii) of that subsection were increased by the number of weeks in the period:

 (d) beginning immediately after the end of the final payment week; and

 (e) ending immediately before the employee reaches pension age (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act)).

(4) If:

 (a) a Parliamentary Service employee suffered an injury before the commencement of this item; and

 (b) compensation is payable under section 19, 20, 21, 21A or 22 of the *Safety, Rehabilitation and Compensation Act 1988* in respect of the injury for 104 weeks (whether consecutive or not) during which the employee is incapacitated; and

 (c) the last of those weeks (the ***final payment week***) ends before the employee reaches pension age (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act));

subsection 23(1B) of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) has effect, in relation to the injury, as if the number of weeks mentioned in subparagraph (b)(ii) of that subsection were increased by the number of weeks in the period:

 (d) beginning immediately after the end of the final payment week; and

 (e) ending immediately before the employee reaches pension age (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act)).

(5) The amendment of section 137 of the *Safety, Rehabilitation and Compensation Act 1988* made by this Act applies in relation to a determination made by the relevant authority after the commencement of this item.

Part 10—Miscellaneous

63 Constitutional safety net

(1) If the operation of this Act or the transitional rules would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

64 Transitional rules

(1) The Minister may, by legislative instrument, make rules (***transitional rules***) prescribing matters:

 (a) required or permitted by this Act to be prescribed by the transitional rules; or

 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subitem (1), the transitional rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:

 (a) the amendments or repeals made by this Act; or

 (b) the enactment of this Act.

(3) To avoid doubt, the transitional rules may not do the following:

 (a) create an offence or civil penalty;

 (b) provide powers of:

 (i) arrest or detention; or

 (ii) entry, search or seizure;

 (c) impose a tax;

 (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

 (e) directly amend the text of this Act.