

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated on the authority of the Minister for Industrial Relations,
the Honourable Laurie Brereton MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED



INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 1994

OUTLINE

This bill will amend five Acts.

The amendments will give effect to recommendations made by the Waterfront Industry Reform Authority (WIRA) and the Stevedoring Industry Finance Committee (the Committee) arising from the Government's waterfront reform program in so far as they relate to levy collection.

Port Conciliators and Co-ordinating Committees

The *Industrial Relations Act 1988* is to be amended to abolish the industrial relations machinery for the stevedoring industry established by Division 9 of Part VI of that Act. The machinery established by Division 9 of Part VI is no longer used following the move to enterprise employment. Industrial disputes in the industry are now dealt with by the Australian Industrial Relations Commission exercising its jurisdiction under the Act. The amendments will bring the Act into conformity with current practice.

The Stevedoring Industry Levy Acts

The Stevedoring Industry Levy Acts are the:

- *Stevedoring Industry Acts (Termination) Act 1977*;
- *Stevedoring Industry Finance Committee Act 1977*;
- *Stevedoring Industry Levy Act 1977*; and
- *Stevedoring Industry Levy Collection Act 1977*.

The Stevedoring Industry Levy Acts need to be read together. They establish and provide for the collection of a general levy and special levies for the purpose of funding the Committee in meeting its obligations. The general levy has become redundant and is to be abolished. The special levies, however, are to be continued until a loan taken out by the Committee from the Australian Industry Development Corporation (the AIDC) is discharged. The loan was used to finance the stevedoring employers' contribution to the special "one-off" early retirement/redundancy packages provided for in the In-Principle Agreement reached between the industry parties under the auspices of WIRA in 1989.

Changes are also made to the composition and functions of the Committee, which administers the levies. The changes reflect the reduced role of the Committee.

The *Stevedoring Industry Acts (Termination) Act 1977* is redundant and is to be repealed. A "sunset clause" is to be inserted in each of the other Acts to provide that they cease to have effect when all the obligations and liabilities of the Committee have been discharged and all surplus funds (if any) have been distributed in a manner approved by the Minister.

Part 1 of the bill is formal.

Part 2 of the bill repeals Division 9 of Part VI of the *Industrial Relations Act 1988* which establishes special industrial relations machinery for the stevedoring industry.

Part 3 of the bill repeals the *Stevedoring Industry Acts (Termination) Act 1977*.

Part 4 of the bill amends the *Stevedoring Industry Finance Committee Act 1977* to:

- (a) reduce the size of the Committee;
- (b) remove the requirement that the Committee maintain a register of waterside workers for the purposes of levy collection;
- (c) remove obsolete requirements concerning certain payments by the Committee;
- (d) clarify the Committee's power to meet any incidental expenses associated with the collection or recovery of the levy; and
- (e) insert a sunset clause.

Part 5 of the bill amends the *Stevedoring Industry Levy Act 1977* to:

- (a) abolish the general levy imposed by the Act; and
- (c) insert a sunset clause.

Part 6 of the bill amends the *Stevedoring Industry Levy Collection Act 1977* to:

- (a) replace the term "waterside worker" with that of "stevedoring employee" to reflect current usage;
- (b) prescribe those stevedoring employees in respect of whom levy will and will not be payable;
- (c) transfer regulations 5 and 6 from the *Stevedoring Industry Levy Collection Regulations* which specify certain information that a ship's agent must furnish to an employer;
- (d) increase most penalties by 100 per cent; and
- (e) insert a sunset clause.

FINANCIAL IMPACT STATEMENT

The bill will have no significant impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short title

1.1 This is a formal provision specifying the short title of the bill.

Clause 2: Commencement

2.1 This clause specifies when the various provisions of the bill are to commence.

2.2 Subclause 2(2) provides that Part 3, which provides for the repeal of the *Stevedoring Industry Acts (Termination) Act 1977*, commences on the 28th day after the date of Royal Assent.

2.3 By subsection 2(3) the remaining provisions of the Act are to commence on a day or days to be fixed by Proclamation. This will allow the new provisions to be explained to the industry and any necessary changes in procedure to be put in place.

2.4 By subsection 2(4) any provision referred to in subsection 2(3) which has not commenced within 6 months of the date of Royal Assent will commence on the first day after the end of that period.

PART 2 - AMENDMENTS OF THE *INDUSTRIAL RELATIONS ACT 1988*

Clause 3: Principal Act

3.1 This is a formal provision.

Clause 4: Repeal of Division 9 of Part VI

4.1 Clause 4 repeals Division 9 of Part VI of the Principal Act. Division 9 provides for Port Conciliators and Port Co-ordinating Committees. Port Conciliators have the function of assisting parties to an award covering waterside workers to implement procedures contained in the award for preventing or settling disputes. Port Co-ordinating Committees have the function of encouraging agreement between waterside workers and waterside employees with a view to ensuring the effective conduct of stevedoring operations in Australia.

4.2 With changes in the industry the provisions of Division 9 of Part VI have fallen into disuse. There are now no Port Conciliators or Port Co-ordinating Committees and disputes in the industry are dealt with by the Australian Industrial Relations Commission. The provisions are therefore to be repealed.

PART 3 - REPEAL OF THE STEVEDORING INDUSTRY ACTS (TERMINATION) ACT 1977

Clause 5: Principal Act

5.1 This is a formal provision.

Clause 6: Repeal

6.1 This clause repeals the *Stevedoring Industry Acts (Termination) Act 1977*. This Act makes transitional provisions in relation to the abolition of the Australian Stevedoring Industry Authority (ASIA), which was the predecessor to the Stevedoring Industry Finance Committee established by the *Stevedoring Industry Finance Committee Act 1977*. In particular it deals with the transfer of property, liabilities and obligations from ASIA to the Committee.

6.2 The Act no longer has any application and is therefore to be repealed.

PART 4 - AMENDMENTS OF THE STEVEDORING INDUSTRY FINANCE COMMITTEE ACT 1977

This Part amends the *Stevedoring Industry Finance Committee Act 1977*, which established the Stevedoring Industry Finance Committee and set out its powers and functions.

Clause 7: Principal Act

7.1 This is a formal provision.

Clause 8: Interpretation

8.1 This clause amends section 3 of the Principal Act as follows:

- paragraph 8(a) substitutes the term "stevedoring employee" for the term "waterside worker". This reflects current usage in the industry and is consistent with the wording of the *Stevedoring Industry Award 1991*;
- paragraph 8(b) omits certain definitions which are no longer necessary; and
- paragraph 8(c) inserts a definition of "stevedoring employee", which is defined in the *Stevedoring Industry Levy Collection Act 1977*.

Clause 9: Constitution of Committee

9.1 Existing subsection 5(1) provides that the Committee shall be constituted by nine persons appointed by the Minister, including a chairperson and eight other persons.

9.2 With the abolition of the general levy and a consequential reduction in the role of the Committee it is proposed to reduce membership of the Committee to four persons appointed by the Minister. Accordingly, paragraph 9(1)(a) of the Bill repeals subsection 5(1) and substitutes a new subsection establishing a committee comprising four persons, including a chairperson, an officer of the Department of Industrial Relations and two persons to represent employers and employees respectively. It will not be necessary for persons to be nominated for appointment to the Committee.

9.3 Paragraph 9(1)(b) omits subsection 5(4) of the Principal Act. Subsection 5(4) provides that the appointment of a member of the Committee is not invalidated and shall not be called into question by reason of a defect or irregularity in connection with his nomination. Since the proposed amendment of subsection 5(1) does not provide for the nomination of persons to be appointed to the Committee, subsection 5(4) is no longer necessary.

9.4 Subclauses 9(2) and (3) are savings provisions which preserve the appointments of the current chairperson of the Committee and the current representative of the Department. Upon the commencement of these provisions it will be necessary to appoint two persons to represent employers and stevedoring employees respectively.

Clause 10: Functions of the Committee

10.1 Subclause 10(a) makes amendments consequential upon the change in terminology from "waterside workers" to "stevedoring employee".

10.2 Subclause 10(b) omits paragraphs 6(d) and (e) of the Principal Act.

10.3 Paragraph 6(d) requires the Committee to establish and maintain registers of waterside workers in accordance with section 14 of the Principal Act. For reasons which are explained in detail in the notes on clause 12 of the Bill, the requirement to establish and maintain such registers is to be repealed in so far as it relates to levy collection.

10.4 Paragraph 6(e) of the Principal Act requires the Committee to make available to the Association of Employers of Waterside Labour or to persons engaged in stevedoring operations, property that is vested in the Committee by operation of section 14 of the *Stevedoring Industry Acts (Termination) Act 1977*. The provision is redundant and is therefore to be repealed.

Clause 11: Powers of the Committee

11.1 This clause amends section 7 of the Principal Act to make it clear that the Committee has power to engage people to advise or assist in the performance of its functions.

Clause 12 - Repeal of Parts III and IV

12.1 Subclause 12(1) repeals Parts III and IV of the Principal Act.

12.2 Part III - Payments by Committee in Respect of Waterside Workers, provides for certain payments by the Committee to the Association or to employers of stevedoring employees, or to the Commonwealth. Subject to what is said in paragraph 12.4 below, the provisions of Part III are redundant and are therefore to be repealed.

12.3 Part IV of the Principal Act requires the Committee to establish and maintain a Register of Waterside Workers in each port in Australia at which stevedoring operations are conducted. With the move to enterprise employment in the industry the maintenance of registers in relation to levy collection has become impractical and unnecessary. Consequently, Part IV of the Principal Act is to be repealed.

12.4 Subclauses 12(2), (3) and (4) are consequential upon the repeal of Part III of the Principal Act. They provide that where, immediately before the commencement of subclause 12(2), the Committee held any money for the purpose of reimbursing an employer for expenditure incurred in discharging a relevant award obligation or in relation to legislatively based long service leave entitlements up to and including 4 December 1977 and the Committee is satisfied that an employer is required, or will in the future be required, to make a payment to or in relation to a stevedoring employee under that obligation, the Committee is to pay the amount to the employer. "Relevant award obligation" means an obligation imposed on an employer by an award or order of the Australian Industrial Relations Commission, being an obligation that has been approved by the Minister and is described in the award or order as a relevant award obligation for the purposes of the Principal Act. The provisions reflect existing section 8 of the Principal Act, and are necessary to ensure that, following the repeal of Part III, employers will still be able to obtain reimbursement for expenses incurred in discharging any relevant award obligations that may still exist.

Clause 13: Money payable to Committee

13.1 This is a technical amendment.

Clause 14 - Repeal and substitution of new section

14.1 This is a technical amendment.

Clause 15: Application of money of the Committee

15.1 Subclause 15(a) and (c) make technical amendments to section 18 of the Principal Act.

15.2 Subclause 15(b) makes it clear that the Committee may apply its money to meeting administrative and other costs and expenses incurred in, or in connection with, making payments to the Commonwealth or in the payment of remuneration or allowances payable to any person under the Principal Act.

Clause 16: Repeal of sections 21 and 22

16.1 Section 21 deals with the maintenance of proper accounts and records and associated matters and section 22 deals with inspection and audit by the Auditor-General.

16.2 Similar provisions are contained in Division 2 of Part XI of the *Audit Act 1901*, which applies to the Committee. Sections 21 and 22 are therefore unnecessary.

Clause 17: Repeal of section and substitution of new section

17.1 This clause repeals section 23 of the Principal Act and substitutes a new section 23.

17.2 Existing section 23 provides for the nomination and appointment of deputy members of the Committee. The amendment is consequential upon the proposed changes to the constitution of the Committee (see paragraphs 9.1 to 9.4 above).

Clause 18: Tenure of office

18.1 This amendment is consequential upon the removal of the requirement that members of the Committee be nominated for appointment (see paragraph 9.2 above).

Clause 19: Meetings of the Committee

19.1 Subclause 19(a) amends section 26 of the Principal Act by requiring all 4 members of the Committee to be present for a meeting of the Committee to be validly held. This reflects the reduction in membership of the Committee from nine to four persons (see paragraph 9.2 above).

19.2 The effect of subclause 19(b) is that a resolution to delegate all or any of the Committee's powers must be agreed to by at least three members of the Committee. This reflects the proposed reduction in the membership of the Committee.

Claus 20: Register of stevedoring employees

20.1 This clause inserts a new section 26A in the Principal Act.

20.2 Proposed section 26A will require the Committee to establish a register containing the names of stevedoring employees. However, it will not be necessary for the Committee to have on the register the name of any stevedoring employee for whom the relevant employer keeps prescribed records. Time and wages records which are required to be kept under the *Industrial Relations Act 1988* will be prescribed. The industry parties will be consulted about any other records which should be prescribed.

Clause 21: Taxation

21.1 This is a technical amendment consequential upon the proposed repeal of the *Stevedoring Industry Acts (Termination) Act 1977*. It does not alter the Committee's current liability to pay rates, taxes (other than income tax) and charges.

Clause 22: Delegation

22.1 Section 29 of the Principal Act deals with the powers of the Committee to delegate all or any of its functions. The proposed amendments are consequential upon the proposed reduction in the membership of the Committee and make some minor technical amendments.

Clause 23: Repeal of section 30

23.1 Section 30 of the Principal Act duplicates provisions of the *Audit Act 1901* concerning the preparation of reports and financial statements and their presentation to the Minister. Those provisions apply to the Committee. Section 30 is therefore unnecessary and is to be repealed.

Clause 24: Addition of new section

24.1 Clause 24 inserts a new section 32 in the Principal Act.

24.2 New section 32 is a "sunset clause". Subsection 32(1) provides that if the Committee is satisfied that all its obligations and liabilities have been discharged it must tell the Minister in writing and must prepare and give to the Minister a scheme for distributing any surplus funds held by the Committee. If the Minister approves the scheme then, under proposed subsection 32(2) the Committee must distribute the funds in accordance with the scheme as soon as practicable.

24.3 Proposed subsection 32(3) provides that the Principal Act shall cease to have effect upon the publication in the *Gazette* of a notice signed by the Minister certifying that all obligations and liabilities of the Committee have been discharged and any surplus funds have been distributed in a manner approved by the Minister.

24.4 Provisions are to be inserted into the *Stevedoring Industry Levy Act 1977* and the *Stevedoring Industry Levy Collection Act 1977* to the effect that those Acts cease to have effect when the *Stevedoring Industry Finance Committee Act* ceases to have effect.

PART 5 - AMENDMENTS OF THE STEVEDORING INDUSTRY LEVY ACT 1977

Clause 25: Principal Act

25.1 This is a formal provision.

Claus 26: Imposition of levies

26.1 This clause amends section 4 of the Principal Act. Paragraph 26(a) substitutes the term "stevedoring employee" for the term "waterside worker" to reflect current usage in the industry.

26.2 Paragraph 26(b) omits paragraph 4(1)(a) of the Principal Act, which imposes a general levy in respect of the employment of Division A and Division B waterside workers. This gives effect to the intention to abolish the general levy.

26.3 Paragraph 26(c) omits the word "special" in relation to the remaining levies imposed by the Principal Act. The abolition of the general levy makes the use of the word "special" inappropriate.

Clause 27: Rate of levy referred to in paragraph 4(1)(a)

27.1 This clause repeals section 5 of the Principal Act which specifies the rate of general levy for the employment of Division A waterside workers. The repeal of section 5 is consequential upon the abolition of the general levy.

Clause 28: Person liable

28.1 This clause is consequential upon the change in terminology from "waterside worker" to "stevedoring employee".

Clause 29: Phasing out of general levy

29.1 This clause repeals section 9A of the Principal Act.

29.2 Section 9A provides that the Minister may notify a "finishing date" in the Gazette when the general levy has ceased to be imposed in respect of the employment of Division B waterside workers by an employer at a port. With the proposed repeal of the provisions imposing the general levy section 9A is no longer necessary.

Clause 30: Expiry of levy

30.1 This clause amends section 10 of the Principal Act reflecting the change in terminology from "waterside worker" to "stevedoring employee".

Clause 31: Addition of new section

31.1 This clause inserts a sunset clause in the Principal Act (see paragraphs 24.1 to 24.4 above).

**PART 6 - AMENDMENTS OF THE STEVEDORING INDUSTRY LEVY
COLLECTION ACT 1977**

Clause 32: Principal Act

32.1 This is a formal provision.

Clause 33: Interpretation

33.1 This clause amends section 3 of the Principal Act as follows:

- paragraph 33(a) omits the definitions of "Division A waterside worker" and "Division B waterside worker". Under the reform process, the introduction of the "stevedoring employee" classification makes the Division A and Division B concept redundant;
- paragraph 33(a) also omits the definition of "registered person" and "waterside worker". This is consequential upon the definition of the work of stevedoring employees which is to be subject to levy and that which is not subject to levy;
- paragraph 33(b) corrects a minor drafting error;
- paragraph 33(c) reflects the change in name of the "Waterside Workers' Federation of Australia" to the "Maritime Union of Australia"; and
- paragraph 33(d) inserts a definition of "stevedoring employee".

Clause 34: Insertion of new section

34.1 This clause inserts a new section 3A in the Principal Act.

34.2 Proposed section 3A defines "stevedoring employee". This replaces the definition of "waterside worker" which is omitted by clause 3(a). The new terminology reflects current industry usage and is consistent with the wording of the *Stevedoring Industry Award 1991*. The new definition is similar to the existing

definition of "waterside worker" but reflects the intention that, with the move to an enterprise based integrated work force, employers shall not be required to pay levy in respect of the employment of employees whose employment is not currently subject to levy. Accordingly, proposed subsection 3A(3) specifies in greater detail those employees who are not included in the definition.

34.3 The effect of proposed subsection 3A(4) will be that where, before the commencement of the amendments, an employer was required to pay levy in respect of the employment of an employee, that liability will continue notwithstanding that the employee is excluded from the definition of "stevedoring employee" by proposed subsection 3A(3).

Clause 35: Employment in respect of which levy is payable

35.1 Clause 35(a) amends section 4 of the Principal Act by omitting subsections (1) and (2).

35.2 Subsections (1) and (2) deal with calculating the number of worker hours of Division A and Division B waterside workers for the purpose of calculating the general levy payable by the employer in respect of their employment. With the proposed abolition of the general levy and of the classifications of Division A and Division B waterside workers those provisions are no longer required.

35.3 Clause 35(b) makes a consequential amendment.

Claus 36: Returns by employers

36.1 This clause amends section 6 of the Principal Act to omit references to the employment of Division A and Division B waterside workers. This is consequential upon the abolition of those classifications.

Clause 37: Insertion of new sections

37.1 Clause 37 inserts new sections 8A and 8B. These sections reproduce the provisions of regulations 5 and 6 of the *Stevedoring Industry Levy Collection Regulations* which will be repealed.

37.2 Proposed new section 8A requires a ship's agent responsible for any local or overseas cargo loaded into a ship and for any overseas cargo unloaded from a ship by stevedoring employees to furnish the employer of the stevedoring employees with a statement setting out the particulars of the cargo. The form must be provided within 21 days after the end of the month in which the cargo is loaded or unloaded as the case may be. "Ship's agent" is defined in proposed subsection 8A(3).

37.3 Under proposed section 8B it is an offence for a person not to comply with proposed section 8A.

37.4 It was decided to, in effect, transfer the provisions of regulations 5 and 6 to the Act to give them appropriate prominence and weight.

Clause 38: Offences relating to returns etc.

38.1 Clause 38 amends section 9 of the Principal Act by increasing the penalty imposed on an employer who fails or neglects to furnish a return or information as required by section 6 of the Principal Act or furnishes a return or information that is false or misleading.

38.2 The penalty is increased from \$1500 to \$3000. In keeping with current drafting practice the penalty is expressed in penalty units.

Clause 39: Access to premises, books etc.

39.1 Clause 39 increases the penalty imposed on any person who, without reasonable excuse, obstructs or hinders an authorised person from entering any premise pursuant to a warrant.

39.2 The penalty is increased from \$1000 to \$2000. In keeping with current drafting practice the penalty is expressed in penalty units.

Clause 40: Regulations

40.1 Clause 40 amends section 11 of the Principal Act.

40.2 Section 11 allows penalties, not exceeding a fine of \$1,000, to be prescribed for offences against the regulations made under the Principal Act.

40.3 In keeping with current drafting practice the \$1,000 penalty limit is expressed in penalty units of \$100. The penalty is not increased.

Clause 41: Addition of new section

41.1 This clause inserts a sunset clause in the Principal Act (see paragraphs 24.1 to 24.4 above).

