Commonwealth Coat of Arms of Australia

Stevedoring Levy (Collection) Act 1998

No. 87, 1998

An Act to provide for a levy on certain stevedoring operations, and for related purposes

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**Stevedoring Levy (Collection) Act 1998**

**No. 87, 1998**

An Act to provide for a levy on certain stevedoring operations, and for related purposes

[*Assented to3 July 1998*]

The Parliament of Australia enacts:

## Part 1—Preliminary

##### 1 Short title

This Act may be cited as the *Stevedoring Levy (Collection) Act 1998*.

##### 2 Commencement

This Act commences on the day on which it receives the Royal Assent.

##### 3 Crown to be bound

This Act binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

##### 4 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to offences against this Act.

##### 5 Definitions

In this Act, unless the contrary intention appears:

***container*** means a receptacle that:

(a) is designed to be loaded from one mode of transport to another without the contents being unpacked; and

(b) is of a kind ordinarily used as part of an international containerised cargo transport system; and

(c) has a capacity of at least 14 cubic metres;

and includes:

(d) a cargo‑handling device commonly known as a bolster; and

(e) a cargo‑handling device commonly known as a flat rack.

***constitutional corporation*** means any of the following:

(a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;

(b) a trading corporation, or financial corporation, to which paragraph 51(xx) of the Constitution applies;

(c) a body corporate incorporated in a Territory.

***constitutional trade or commerce*** means trade or commerce:

(a) between Australia and a place outside Australia; or

(b) between the States; or

(c) within a Territory, between a State and a Territory or between 2 Territories.

***first levy month*** means the month notified by the Minister under section 9.

***inspector*** means a person appointed as an inspector under section 15.

***late payment penalty*** means an additional amount payable under section 12.

***levy*** means levy payable under this Act.

***loading*** does not include:

(a) a re‑loading of cargo onto a ship following a temporary unloading of that cargo from the ship; or

(b) a re‑loading of cargo following a trans‑shipment unloading of that cargo.

***month*** means any of the months of the year.

***Secretary*** means the Secretary to the Department.

***ship*** includes a barge, lighter, hulk or other vessel.

***stevedoring industry*** means the stevedoring industry, so far as it involves:

(a) stevedoring in the course of constitutional trade or commerce; or

(b) stevedoring by a constitutional corporation.

***temporary unloading*** means an unloading of cargo from a ship that is done solely for the purpose of:

(a) re‑positioning that cargo, or other cargo, on the ship; or

(b) allowing other cargo to be loaded onto or unloaded from the ship.

***trans‑shipment unloading*** means an unloading of cargo from a ship that is done solely for the purpose of allowing the cargo to be loaded onto another ship at the same port.

***unloading*** does not include a temporary unloading or a trans‑shipment unloading.

##### 6 Purpose of the levy

The purpose of the levy is to meet the cost of payments under section 18.

## Part 2—Liability for levy

##### 7 Stevedoring levy

(1) Levy is payable on the following:

(a) the loading of a container onto a ship in Australia;

(b) the unloading of a container from a ship in Australia;

(c) the self‑propelled loading of a vehicle onto a ship in Australia;

(d) the self‑propelled unloading of a vehicle from a ship in Australia.

Note: Driving a car off a ship is an example of a self‑propelled unloading.

(2) Levy is not payable on the unloading of a container or vehicle from a ship if levy was payable on the most recent loading of that container or vehicle onto the ship.

(3) Levy is not payable on loading or unloading that occurs in a month later than the final levy month notified by the Minister under section 9.

##### 8 Person liable to pay levy

(1) Subject to this section, levy on loading or unloading is payable by the person (the ***responsible person***) who was responsible for the loading or unloading (otherwise than in the capacity of agent of the owner or charterer of the ship).

(2) If the responsible person is a body corporate, then the following persons are instead jointly and severally liable to pay the levy:

(a) the responsible person; and

(b) each other body corporate that was a related body corporate at the time of the loading or unloading.

(3) In this section:

***body corporate*** means a body corporate that is incorporated (or taken to be incorporated) under the Corporations Law of a State or Territory.

***related body corporate*** has the same meaning as in the Corporations Law.

***responsible*** means responsible under a contract, arrangement or understanding with the owner or charterer of the ship (or with a person acting on behalf of the owner or charterer).

##### 9 First levy month and final levy month

(1) The Minister may, by notice in the *Gazette*, notify a month as the first levy month for the purposes of this Act.

(2) The notified month cannot be earlier than the 2nd month after the month in which this Act received the Royal Assent.

(3) The Minister may, by notice in the *Gazette*, notify a month as the final levy month for the purposes of this Act.

(4) A notice under this section cannot be amended or revoked.

## Part 3—Collection of levy

##### 10 Returns

(1) A person who is liable to pay levy for a month must lodge a return with the Secretary within 14 days after the end of the month.

(2) The return must be in a form approved by the Secretary and must contain the information required by the form.

(3) If 2 or more persons are jointly and severally liable to pay levy on a particular loading or unloading, a return lodged by one of those persons discharges the obligation of the others under subsection (1), in so far as the obligation relates to that loading or unloading.

##### 11 Due date for payment

Levy for a month is due for payment on the 14th day of the following month.

##### 12 Penalty for late payment

(1) If any levy remains unpaid after the time when it is due for payment, an additional amount is payable to the Commonwealth by way of penalty, calculated at the rate of 20% per annum on the amount of the levy from time to time remaining unpaid, to be computed from the day on which the levy became due for payment.

(2) Late payment penalty in respect of unpaid levy is payable by the person or persons who are liable to pay the unpaid levy.

(3) The Secretary may remit the whole or a part of an amount of late payment penalty, if the Secretary considers that there are good reasons for doing so.

(4) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary not to remit, or to remit only part, of an amount of late payment penalty.

##### 13 Recovery of levy and penalty

(1) The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

(a) levy that has become due for payment;

(b) late payment penalty.

(2) In proceedings for recovery of levy, a statement or averment in the complaint, claim or declaration of the plaintiff is prima facie evidence of the matter stated or averred.

## Part 4—Miscellaneous

##### 14 Access to premises etc.

(1) The functions of an inspector under this section are to search for, inspect, take extracts from and make copies of any levy‑related documents.

(2) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an inspector under this section.

(3) If an inspector has reason to believe that there are levy‑related documents on particular premises, the inspector may make an application to a Justice of the Peace for a warrant authorising the inspector to enter the premises for the purpose of exercising the functions of an inspector under this section.

(4) If the Justice of the Peace is satisfied by information on oath or affirmation:

(a) that there is reasonable ground for believing that there are levy‑related documents on the premises; and

(b) that the issue of the warrant is reasonably required for the purposes of this Act;

the Justice of the Peace may issue a warrant authorising the inspector to enter the premises:

(c) with such assistance as the inspector thinks necessary, and if necessary by force; and

(d) during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time;

for the purpose of exercising the functions of an inspector under this section.

(5) If an inspector has entered any premises under subsection (2), or under a warrant, the inspector may exercise the functions of an inspector under this section.

(6) A person must not obstruct or hinder an inspector who is acting under a warrant or under subsection (5).

Penalty: 20 penalty units.

(7) In this section:

***levy‑related documents*** means any documents relating to matters in respect of which levy is payable, or may be payable.

***premises*** includes the following:

(a) a structure, building, aircraft, vehicle or vessel;

(b) a place (whether enclosed or built on or not);

(c) a part of a thing referred to in paragraph (a) or (b).

***warrant*** means a warrant granted under this section.

##### 15 Appointment of inspectors

(1) The Secretary may, by instrument in writing, appoint any of the following persons as an inspector for the purposes of this Act:

(a) a person employed by the Commonwealth;

(b) a person employed by a State or by the Northern Territory.

(2) In exercising powers or performing functions as an inspector, an inspector must comply with any directions of the Secretary.

(3) The Secretary must issue an identity card to an inspector, in the form prescribed by the regulations. The identity card must contain a recent photograph of the inspector.

(4) If a person to whom an identity card has been issued ceases to be an inspector, the person must immediately return the identity card to the Secretary.

Penalty: 1 penalty unit.

(5) An inspector must carry the identity card at all times when exercising powers or performing functions as an inspector.

##### 16 Offences

A person must not:

(a) fail to lodge a return as required by section 10; or

(b) provide a false or misleading return or information for the purposes of this Act.

Penalty: 50 penalty units.

##### 17 Delegation

(1) The Minister may, by instrument in writing, delegate to a person holding or performing the duties of a Senior Executive Service office in the Department all or any of the Minister’s powers or functions under this Act. In exercising powers or functions under the delegation, the delegate must comply with any directions of the Minister.

(2) The Secretary may, by instrument in writing, delegate to a person holding or performing the duties of a Senior Executive Service office in the Department all or any of the Secretary’s powers or functions under this Act. In exercising powers or functions under the delegation, the delegate must comply with any directions of the Secretary.

(3) After the commencement of the *Public Service Act 1998*, a reference in this section to a person holding or performing the duties of a Senior Executive Service office in the Department is to be treated as a reference to an SES employee or acting SES employee in the Department.

##### 18 Payments in connection with stevedoring industry reform

(1) The Minister may authorise the following payments:

(a) payments in connection with qualifying redundancies, including:

(i) payments to a Commonwealth company (within the meaning of the *Commonwealth Authorities and Companies Act 1997*)for the purpose of helping the company to meet payment obligations in respect of money borrowed for the purpose of making payments in connection with qualifying redundancies; and

(ii) payments by the Commonwealth under a guarantee given by a Minister on behalf of the Commonwealth in connection with a borrowing referred to in subparagraph (i);

(b) payments in connection with the following activities that are undertaken after the commencement of this Act in connection with the reform or restructuring of the stevedoring industry:

(i) occupational health and safety programs;

(ii) training programs to improve the performance of work;

(iii) the introduction of new technology or the improvement of wharf facilities;

(c) payments in respect of activities that are prescribed by the regulations, being activities in connection with the reform or restructuring of the stevedoring industry;

(d) payments in respect of administrative costs that are in connection with the matters in respect of which payments may be authorised under paragraph (a), (b) or (c);

(e) administrative costs incurred by the Commonwealth in connection with the collection or administration of the levy.

(2) No more than $250 million in total may be authorised under this section.

(3) The Consolidated Revenue Fund is appropriated for the purposes of payments under subsection (1).

(4) The Minister cannot authorise payments under paragraph (1)(c) or (1)(d) in respect of an activity prescribed by the regulations until after the end of the period within which those regulations can be disallowed by the Parliament.

(5) In this section:

***qualifying redundancy*** means the termination (either before or after the commencement of this Act), on the ground of redundancy, of the employment of a person doing stevedoring work.

##### 19 Distribution of surplus levy

(1) If the Minister is satisfied that more levy has been received by the Commonwealth than is needed for the purpose for which the levy was imposed, the Minister may determine that the surplus is to be distributed in accordance with a scheme prescribed by the regulations for the purposes of this section.

(2) The Consolidated Revenue Fund is appropriated for the purposes of payments under subsection (1).

##### 20 Reports by Minister

(1) As soon as practicable after the end of each reporting period, the Minister must prepare a report that sets out details of the following matters:

(a) the payments that were authorised by the Minister under section 18 during the reporting period;

(b) the activities during the reporting period of any Commonwealth authority or Commonwealth company (within the meaning of the *Commonwealth Authorities and Companies Act 1997*) that were activities in respect of which the authority or company received payments under section 18 in any reporting period;

(c) distributions under section 19 during the reporting period.

(2) The Minister must cause a copy of the report to be tabled in each House of the Parliament.

(3) For the purposes of this section, each of the following is a ***reporting period***:

(a) the period from the commencement of this Act to the end of the third month after the month in which this Act commences;

(b) the period commencing at the end of that third month and ending at the end of the next 31 December;

(c) each subsequent period of 12 months.

##### 21 Regulations

(1) The Governor‑General may make regulations prescribing matters:

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

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

(2) In particular, regulations may be made on the following matters:

(a) providing for the manner of payment of levy and late payment penalty;

(b) providing for the repayment of overpayments;

(c) requiring persons to keep records about the loading and unloading of ships;

(d) requiring persons to provide information, to such persons as are prescribed, about the loading and unloading of ships;

(e) prescribing the form of warrant for the purposes of section 14;

(f) prescribing penalties for offences against the regulations by way of fines of up to 10 penalty units.

[*Minister's second reading speech made in*

*House of Representatives on 8 April 1998*

*Senate on 22 June 1998*]

(65/98)