Appendix 1

Correspondence

SENATOR THE HON. ERIC ABETZ
LEADER OF THE GOVERNMENT IN THE SENATE
MINISTER FOR EMPLOYMENT
MINISTER ASSISTING THE PRIME MINISTER FOR THE PUBLIC SERVICE
LIBERAL SENATOR FOR TASMANIA

30 JUN 2015

The Hon. Philip Ruddock MP
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Mr Ruddock

This letter is in response to your letter of 13 May 2015 concerning the human rights implications of the Seafarers Rehabilitation and Compensation (Prescribed Ship—Intra-State Trade) Declaration 2015.

This Declaration is a short-term measure, supported by the industry and unions, to address a recent Federal Court decision. The declaration seeks to maintain the long standing status quo until such a time as the Government brings forward broader reform to the scheme.

The Seacare scheme is unlike state and territory workers compensation schemes in that it is industry-specific. It covers a small number of employers in a defined part of the maritime industry, compared to state and territory workers compensation schemes that cover most employers operating within the states and territories across a large number of industries and occupations.

Workers compensation schemes across Australia vary substantially, making it difficult to assess whether an individual would be better off in one scheme or another. To determine if an injured seafarer would be better off under the Seacare scheme compared to a state or territory scheme, a number of factors need to be considered including the injured seafarer's:

- wages
- level of impairment
- subjective preferences for weekly compensation payments or a lump sum payment
- access to common law damages
- ability to return to work.

For example, when comparing the Seacare scheme to Western Australia's workers compensation scheme, as was done by the Maritime Union of Australia in its submission to the Senate Education and Employment Legislation Committee Inquiry into the Seafarers Rehabilitation and Compensation and Other Legislation Amendment Bill 2015, it could be said that in some respects the Seacare scheme is more generous as:

- the Seacare scheme provides weekly compensation until an injured employee fully returns to work or reaches 65 years of age, while Western Australia's scheme caps weekly compensation payments at a total monetary value (currently $212,980.00)
- the Seacare scheme has no monetary limit on the amount of compensation for medical expenses; while Western Australia's scheme has an initial cap of $63,894, with the potential for an additional $50,000 where this amount is insufficient and a further $250,000 in exceptional circumstances.

CANBERRA: MG 68, Parliament House, Canberra ACT 2600. Phone: 02 6277 7320 Fax: 02 6273 4115
HOBART: 136 Davey Street, Hobart TAS 7001 Phone: 03 6224 3707 Fax: 03 6224 3709
minister@employment.gov.au http://abetz.com.au

Focusing narrowly on monetary elements of workers compensation also does not provide the complete picture of the benefits available for injured workers. The best outcome for an injured worker is a swift and durable return to work, not an extended period relying on workers compensation benefits. Claim disputation and resolution rates are also a major factor in a swift return to work.

Injured employees under Western Australia's workers compensation scheme, for example, have much better rehabilitation and return to work prospects than under the Seacare scheme. The Seacare scheme's return to work rate (59 per cent in 2012–13) is substantially below both Western Australia's scheme (75 per cent) and the national average (77 per cent).The Seacare scheme's disputation rate is much higher (18.6 per cent in 2012–13) than Western Australia's scheme (2.5 per cent) and disputes generally take longer to resolve. The poorer rehabilitation and return to work performance of the Seacare scheme highlights that it would be unwise to consider an ad hoc substantial expansion of the scheme.

The comparison between Western Australia's workers compensation scheme and the Seacare scheme is broadly indicative of all comparisons between state and territory schemes in that all schemes present different advantages and disadvantages compared to others.

All seafarers will continue to have access to workers compensation following the Declaration. The effect of the Declaration is that certain seafarers will have access to workers compensation under a state workers compensation scheme rather than the Commonwealth's Seacare scheme. If the Committee is of the view that workers compensation benefits under a state workers compensation scheme insufficiently promote the right to social security, then it is ultimately a matter for the relevant state government to ensure that those rights are better promoted.

To the extent to which the human right to social security is in any way impacted, it is proportionate and appropriate in that the Declaration ensures continued workers compensation coverage of all workers, protects the viability of the Seacare scheme Safety Net Fund and maritime industry employers and provides the opportunity for detailed consideration of reforms to the Seacare scheme that will produce a scheme that better supports the rights to social security and safe, healthy working conditions for seafarers.

During recent consultations with interested parties in the maritime industry, one party raised an issue about how the Declarations affect a 'legacy' class of ships i.e. vessels that were, immediately before the repeal of the *Navigation Act 1912*, covered by a declaration in force under ss 8A(2) or 8AA(2) of that Act. This issue had not been identified in consultations during the development of the Declarations. In order to address this issue, I will be remaking the Declarations to ensure this legacy class of ships is not affected.

Yours sincerely

ERIC ABETZ