Seafarers Rehabilitation and Compensation and Other Legislation Amendment Bill 2015 – AIMPE Submission

Summary

The Seafarers Rehabilitation and Compensation and Other Legislation Amendment Bill 2015 is a response to the Full Federal Court decision in *Samson v Aucote*, however the Bill would not merely restore the *status quo ante* regarding Seacare scheme coverage, but would instead restrict the number of seafarers covered by the legislative scheme so that it would cover only a fraction of the seafarers currently encompassed by the scheme.

For this primary reason the Bill should be opposed.

In addition the Bill fails to address the many important issues highlighted in the report of the Review of the Seacare Scheme of March 2013. These issues include:

1. The need for stand-alone application provisions for the Seacare legislation [both the Seafarers Act and the OSH(MI)];
2. The need for consistency between the Seafarers Act and the Safety, Rehabilitation and Compensation Act;
3. The need for consistency between the OSH(MI) Act and the model Work Health and Safety legislation;

This current Bill should be withdrawn and a more comprehensive, well-considered Bill should be introduced in the Winter or Spring sittings of 2015.

Possible Effects of Seafarers Rehabilitation and Compensation and Other Legislation Amendment Bill 2015

AIMPE submits the Bill should be opposed. The principal reason for this submission is that the enactment of this legislation could see the scope of coverage of the Seacare scheme reduced to a fraction of the current scope of the scheme.

According to the Seacare Annual Report 2013-14 the Full Time Equivalent number of employees under the Seacare scheme was 4,721 [although the raw number of persons was 7,516 employees]. These seafarers worked on 283 vessels. Of these vessels, 166 could be classified as Offshore Oil and Gas vessels. That is over half of the vessels listed in the Seacare Annual Report 2013-14 were engaged in oil and gas exploration, construction, development and operation. A further 43 could be classified as Dredging vessels – that is vessels engaged in developing new channels, turning basins and port facilities.

Putting these two groups of vessels together, 209 vessels listed in the latest Seacare Annual Report do not fit into the traditional constitutional category of "interstate trade and commerce". That is 73.8% or almost three quarters of the vessels currently under Seacare are not engaged in what was traditionally known as interstate trading.

The Offshore Oil and Gas industry did not exist when the Australian Constitution was drafted in the late 19th century. Even in the early 1990s oil and gas was a small proportion of maritime activities and employment in Australia. Likewise Dredging was very limited in scale and ambition in the 1890s and represented only a tiny percentage of maritime employment in Australia in the 1990s when the Seacare legislation was enacted.

The repeal of ss.19 (2) to (5) of the *Seafarers Rehabilitation and Compensation Act 1992* could potentially see all of these vessels excluded from the Seacare scheme to the detriment of the Australian seafarers working in these operations.

Paring back the Seacare legislation to traditional interstate trade and commerce, as contained in s.19 (1) *Seafarers Rehabilitation and Compensation*

Act 1992, could possible see thousands of Australian seafarers disadvantaged by the loss of the protection provided to them since 1993.

The scope of the application of the Seacare legislation has been a matter of debate within the maritime industry for many years. However it has been accepted by virtually every participant in the industry that seafarers in the Offshore Oil and Gas sector and the Dredging sector have been covered by at least the Seacare compensation legislation if not the health and safety legislation. The employers in the Offshore Oil and Gas sector and the Dredging sector have provided the coverage to their employees many of whom move around between employers as projects are completed and new projects commence.

The employers in the Offshore Oil and Gas sector and the Dredging sector have taken out insurance policies as required by the Seacare legislation and have provided the Seacare Authority with details of these policies. The Seacare Authority has also requested annual statistical returns to be provided and these have been completed and submitted by the employers in the Offshore Oil and Gas sector and the Dredging sector.

It would be possible however if the Amendment Bill was passed for it to be argued that these areas of maritime operations do not fall within the constitutional head of power known as the interstate trade and commerce power. Typically Oil and Gas operations do not involve the crossing of State or Territorial boundaries [although there will sometimes be exceptions]. Typically Dredging operations do not involve the crossing of State of Territory boundaries.

It is therefore a real concern that the passage of the Amendment Bill could lead to litigation which could see three quarters of the seafarers currently covered by Seacare excluded from this important protective legislation. Oil and Gas operations and Dredging are high risk operations in a sector which has higher rates of injury than many other sectors of industry in Australia. Seafarers involved in these operations deserve to have the protective Seacare legislation retained. The Bill would jeopardise the current coverage.

The need for reforms for Seacare

The Review into the Seacare Scheme reported in 2013 that there were major reforms needed into the scheme. Mr R. Stewart Compton provided 67 specific recommendations for changes many of which involved legislative action. Whilst there is rarely going to be unanimous agreement about every recommendation in such a substantial and extensive report there are several areas where the need for reform is glaring and long overdue.

This situation is nowhere more obvious than the need for stand-alone coverage provisions for the Seacare legislation. This was the very first recommendation of the 2013 Review. Not only are the two main pieces of Seacare legislation not consistent with each other they are reliant on deemed continuation of the now-repealed Navigation Act of 1912. This is an anachronism which Parliament has a responsibility to rectify as soon as possible. It is two years since the Navigation Act 2012 replaced the old legislation and it is not satisfactory for the fiction of the coverage provisions of the 1912 legislation to continue to provide the foundations of the Seacare scheme.

In addition the Seafarers Rehabilitation and Compensation Act 1992 is related to the Safety Rehabilitation and Compensation Act 1988. The Review of 2013 recommended that:

> *"The Seafarers Act should be amended to be made consistent with the SRC Act in respect of the subjects and provisions set out in Appendix E."*

The changes recommended are several in number but the underlying principle is that the Parliament should not treat one group of workers any less favourably than it treats another group.

The Occupational Health and Safety (Maritime Industry) Act 1993 has not been amended to ensure consistency with the model Work Health and Safety legislation. This action was also recommended by the 2013 Review but no action has been taken. This too should be included in a re-drafted Amendment Bill which could be presented later in 2015.

Conclusion

The Seafarers Rehabilitation and Compensation and Other Legislation Amendment Bill 2015 is an attempt to deal with the perceived problems created by the Samson v Aucote decision however AIMPE submits that it should not be supported by the Senate because it has possible negative consequences for Australian seafarers. Many seafarers currently covered by the Seacare scheme could be excluded from coverage if the Bill is enacted.

Instead a more considered piece of legislation is required to be drafted. Industry consultation would assist in ensuring that such amending legislation would not be disadvantageous to Australian seafarers.