
RESPONSE TO QUESTIONS ON NOTICE

Seafarers Rehabilitation and Compensation and Other Legislation Amendment Bill 2015

18 March 2015

Department of Employment

Question: The MUA in its submission has claimed that Mr Aucote's claim would be extinguished by the Bill. Can you advise if this claim is accurate?

Department of Employment response:

- Mr Aucote's claim and all other existing claims under the *Seafarers, Rehabilitation and Compensation Act 1992* (Seafarers Act) will not be extinguished or in any way affected by the Bill.
 - The Bill includes express provisions (item 5 of schedule 1) to ensure it does not affect the rights of anyone who has already made a claim under the Seafarers Act. As stated in the Explanatory Memorandum to this provision: "*This will ensure that any claims that have been made or which have already been determined under the Seafarers Act will not be disturbed by the amendments made by the Bill.*"
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Question: Will any previous claims be disturbed or extinguished by this Bill? What will occur if this Bill isn't passed to previous claims?

Department of Employment response:

- The Bill includes express provisions (**Item 5 of Schedule 1**) to ensure that it does not affect any claims which have already been made under the Seafarers Act, regardless of whether those claims are still being considered or have been finalised. No existing claimants under the Seafarers Act will be affected by the Bill.
 - If the Bill does not pass, this would imperil previous claims by seafarers under their state workers' compensation legislation.
 - Seafarers who were injured on intrastate voyages will have made claims under their state legislation. An implication of the Federal Court's *Samson Maritime v Aucote* [2014] FCAFC 182 is that state legislation does not apply to those seafarers, because the Seafarers Act operates to the exclusion of state workers' compensation laws. Without the amendments in the Bill, these seafarers have lost their rights to compensation under the state acts. Seafarers with long-term incapacities may lose their weekly payments and could potentially be required to pay back any compensation they have received—dating back to 1993. If claims were then determined under the Seafarers Act instead, this would involve considerable delays and would cause further stress to the injured workers, impairing their return to work prospects.
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Question: Varying claims have been made about the coverage of the Seacare Scheme and what it was understood to be. Can the Seacare Authority advise if this Bill restores coverage to what the Authority understood the coverage of the scheme to be?

Seacare Authority response: Mr David Sterrett, Chairperson of the Seacare Authority has provided the following advice:

“It is important to differentiate between the varying claims that have been made about the coverage of the Scheme during the life of the Scheme and the way in which the Scheme has operated since its inception. Notwithstanding the various claims, **the proposed Bill will restore coverage to that in which the Scheme has operated since its inception.** There is no doubt that the introduction of the Bill has provided an opportunity for various parties to once again ventilate their differing views as to what coverage they would like to see. However the Bill is only intended to counteract the effect of the recent judgement, not create a new interpretation.”

Department of Employment response:

- Additionally, the Seacare Authority regularly publishes guidance on the coverage of the Seacare Scheme. The most recent guidance is available here:
http://www.seacare.gov.au/_data/assets/pdf_file/0019/111655/Seacare_Notice_06_2012.pdf.
 - This guidance states that the principal test for whether a ship is covered is (page 7):
 1. Is there employment of employees?
 2. Is the vessel a prescribed ship? (that is, is it a ship registered in Australia, a ship used to engage in coastal trading under a general licence or transitional licence, or a ship of which a majority of the crew are Australian residents and which is operated by an Australian company, person or firm)
 3. Is the prescribed ship engaged in trade or commerce:
 - a. Between Australia and places outside Australia,
 - b. Between two places outside Australia,
 - c. Among the States (inter-State),
 - d. Within a Territory (intra-Territorial),
 - e. Between a State and a Territory or
 - f. Between two territories?
 - While the Guidance quotes the entirety of section 19 of the Seafarers Act, the Guidance makes no statement that ships, employers or employees are covered because an employer is a trading, financial or foreign corporation.
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Question: How will workers be affected if this Bill isn't passed? Is there any immediate risk?

Department of Employment response:

- The Department's submission outlines the effect on workers if the Bill is not passed.
- The immediate risks for seafarers are that:
 - Seafarers who were previously thought to be covered by state legislation and have received compensation could have their compensation cancelled or be forced to repay money they have received.
 - The Safety Net Fund could be exhausted by an increase in unexpected claims, leaving seafarers whose employer has gone insolvent with no alternative source of workers' compensation.
 - State work health and safety regulators have lost jurisdiction to regulate intrastate voyages. Previous enforcement actions and prosecutions in relation to intrastate voyages could be challenged and overturned.
 - Further, AMSA and Comcare do not have the resources to provide work health and safety regulation for intrastate voyages in place of the state regulators. This will leave thousands of seafarers without an effective work health and safety inspectorate, jeopardising their safety at work.

Question: Was there any consultation with the unions prior to the introduction of the legislation? At that time were unions aware of the decisions of the AAT or the Federal Court?

Department of Employment response:

- The Department met with an officer of the Maritime Union of Australia (MUA) on 16 February prior to the introduction of the Bill. The Department discussed the Federal Court's *Aucote* decision and actions being considered by the Seacare Authority and the Government to address the decision.
 - The Department also discussed the exemption to be issued by the Seacare Authority to mitigate some of the immediate risks posed by the *Aucote* decision.
 - Three maritime unions, the MUA, the Australian Marine Officers Union and the Australia Institute of Marine and Power Engineers, are also represented on the Seacare Authority. The AAT *Aucote* decision was raised at Seacare Authority meetings in August and September 2014 and again in February 2015. At the February meeting, Seacare Authority members discussed the Federal Court decision and decided to grant an exemption under section 20A of that Act to exclude the ships brought under the scheme by virtue of the Federal Court's decision.
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Question: The Department's submission included information about further reform to the Seafarers Act being brought to the Parliament in the near future following consultation. But for the *Aucote* decisions would this legislation have been brought on sooner?

Department of Employment response:

- The Government has committed to further reforms of the Seacare scheme during 2015. Prior to the *Aucote* matter, the Department was developing legislation for substantive reforms to the Seacare scheme, including reforms to the coverage of the Seacare scheme, reforms to the workers' compensation and work health and safety legislation and reforms to the governance of the Seacare scheme.

The development of these substantive reforms was necessarily delayed to address the immediate risk caused by the *Aucote* decisions. With the swift passage of the Bill, the Department will return its focus to the much needed modernisation and reform of the Seacare scheme.