

Chapter 3

Key issues

Introduction

3.1 The committee received seven submissions regarding the bill. There was broad agreement that the Seacare scheme needs to be updated, but no consensus on the appropriate future model.

3.2 The Department of Employment (the department) argued that both employers and employees would benefit in a multitude of ways from the provisions of the bill:

The Bills Package will bring the Seacare scheme into the 21st century by modernising its WHS and workers' compensation legislation and providing for more efficient and effective governance of the scheme... The proposed reforms to the Seacare scheme are expected to provide significant benefits to Seacare employers and employees through improvements in safety outcomes, reducing the costs of workplace injuries for both employers and employees, and reducing costs associated with the current uncertainty over the coverage of the scheme.¹

3.3 There were divergent views expressed by industry stakeholders regarding the proposed reforms to the Seacare scheme. The Australian Mines and Metals Association (AMMA) and Maritime Industry Australia Limited (MIAL), for example, called for the abolition of both the Seacare Authority and the Seacare scheme altogether,² while the Australian Council of Trade Unions (ACTU) and the Maritime Union of Australia (MUA) preferred that the Seacare Authority remain in existence.³

3.4 Other issues raised by industry and employee representative groups include the:

- proposed new coverage test;⁴
- work health and safety and workers' compensation reforms;⁵ and

1 Department of Employment, *Submission 2*, p. 10.

2 Australian Mines and Metals Association, *Submission 3*, p. 1; Maritime Industry Australia Limited, *Submission 1*, p. 5.

3 Australian Council of Trade Unions, *Submission 5*, p. 5; Maritime Union of Australia, *Submission 4*, p. 39.

4 Maritime Union of Australia, *Submission 4*, p. 39; Maritime Industry Australia Limited, *Submission 1*, p. 8; Australian Mines and Metals Association, *Submission 3*, p. 6; and Department of Employment, *Submission 2*, p. 5.

5 Maritime Union of Australia, *Submission 4*, p. 40; Australian Council of Trade Unions, *Submission 5*, p. 6; Australian Mines and Metals Association, *Submission 3*, p. 8; and Maritime Industry Australia Limited, *Submission 1*, p. 12.

- changes in governance arrangements.⁶

3.5 More broadly, support was expressed for particular aspects of the scheme. In particular, submitters agreed that the Seacare scheme's workplace health and safety arrangements needed to be modernised,⁷ and that the definition of medical treatment and lowering the threshold for binaural hearing loss should be extended.⁸

Proposed new coverage test

3.6 The new coverage test would significantly clarify the scheme's application because the proposed test is simpler, 'avoid[ing] the need to consider, on a case by case basis, whether a vessel is engaged in trade and commerce between Australia and places outside Australia, between two places outside Australia, among the states or within a territory.'⁹ The department indicated that this is intended to be a compromise option, as none of the options put forward during consultation were unanimously supported by stakeholders.¹⁰

3.7 MIAL argued that the new coverage test would not alleviate confusion and could jeopardise the Safety Net fund through employers not taking out appropriate coverage, which would leave the Seacare scheme as the default provider.¹¹

3.8 Unions also criticised the new test. The MUA contended that the Aucote decision was incorrectly pinpointed by the government as the prime reason for disputation of claims in the operation of the Seacare scheme. The MUA asserted that delays and the high rate of Seacare appeals to the Administrative Appeals Tribunal are a result of employers avoiding their duties to resolve compensation claims, and since the bill did not address these problems the operation of the scheme would not improve.¹²

3.9 The department, however, stated that the new test would improve governance of the Seacare scheme because coverage 'will no longer be reliant on repealed legislation and a patchwork of legislative instruments' and thus 'it will be much easier for Seacare regulators to determine if a vessel is covered by the scheme.'¹³

6 Maritime Union of Australia, *Submission 4*, pp. 39–40; Australian Council of Trade Unions, *Submission 5*, p. 5; and Maritime Industry Australia Limited, *Submission 1*, p. 13.

7 Maritime Industry Australia Limited, *Submission 1*, p. 3; Department of Employment, *Submission 2*, p. 4; Australian Mines and Metals Association, *Submission 3*, pp. 1–2.

8 Australian Maritime Officers Union, *Submission 6*, p. 15.

9 Department of Employment, *Submission 2*, pp. 5 and 7.

10 Department of Employment, *Submission 2*, p. 5.

11 Maritime Industry Australia Limited, *Submission 1*, p. 8.

12 Maritime Union of Australia, *Submission 4*, p. 7.

13 Department of Employment, *Submission 2*, p. 8.

3.10 The department also explained that the opt-in provisions, which allow for prescribed vessels to choose to be covered by the scheme, would maintain the flexibility the scheme had under the provisions of the *Navigation Act 1912*.¹⁴

Work health and safety reforms

3.11 There were both positive and negative views expressed about certain aspects of the proposed work health and safety reforms.

3.12 The RIS states that:

The duties and requirements in the WHS Act and WHS Regulations are broad based and are capable of applying to a range of sectors, industries and businesses. The section of the maritime industry that is covered by the Seacare scheme is not significantly different from other industries that are covered by general Commonwealth, state or territory work health and safety laws to justify the continuation of separate work health and safety arrangements. Maritime industry employers not currently covered by the OHS(MI) Act already operate under general work health and safety laws in the states and territories.¹⁵

3.13 The ACTU endorsed the principle of harmonisation of the maritime industry work health and safety laws with national standards but raised concerns about the consultation process regarding this issue.¹⁶

3.14 AMMA expressed concerns that the application of the *Work Health and Safety Act* (WHS Act) to vessels covered by Seacare would be too much of a concession to unions, which can use the provisions of the WHS Act to gain right of entry to vessels.¹⁷ MIAL echoed this view, asserting that the creation of an explicit right of entry 'represents the potential for further disruptions to business, where the timeliness of operational movements can be critical.'¹⁸

Workers' compensation reforms

3.15 Similarly, there were arguments for and against the proposed changes to workers' compensation arrangements.

3.16 The Australian Maritime Officers Union (AMOU) supported extending the definition of medical treatment and lowering the threshold for binaural hearing loss.¹⁹

3.17 The MUA opposed section 59 of the bill which sought to expand the definition of superannuation scheme to include a retirement savings account.²⁰ It also

14 Department of Employment, *Submission 2*, p. 5.

15 Seafarers and Other Legislation Amendment Bill 2016, *Regulation Impact Statement*, p. xviii.

16 Australian Council of Trade Unions, *Submission 5*, pp. 2–3.

17 Australian Mines and Metals Association, *Submission 3*, p. 8.

18 Maritime Industry Australia Limited, *Submission 1*, p. 12.

19 Australian Maritime Officers Union, *Submission 6*, p. 15.

opposed increasing the 'eligibility threshold to which employment must contribute to an injury or a disease from a "material" to a "significant" degree' because, in the union's view, it:

...will have the effect of restricting coverage for diseases that may have multiple causes e.g. depression could be due to both family issues and problems at work. We believe the maritime industry requires special consideration in this area due to the all-consuming nature of work at sea... There is no neat boundary between personal and work life.²¹

3.18 Further, the ACTU argued that more compensation claims will be rejected because of the provisions in the bills that seek to change the 'reasonable disciplinary action' exclusion for claims involving psychological injuries to a broader 'reasonable [administrative] action' exclusion.²²

3.19 MIAL, however, voiced concern that the bills package may not provide appropriate incentives for employees to return to work after an injury, namely in the form of step downs in compensation payments overtime.²³ In addition, MIAL was concerned that the extension of the payments beyond the age of 65 will increase costs for employers.²⁴

3.20 In its submission the department stated that in general the new workers' compensations arrangements will have a limited impact:

...overall, the workers' compensation amendments are not expected to have a significant overall impact on Seacare scheme employers and employees, given the minor nature of the amendments and the very limited number of claims that are expected to be affected. There will be a minor overall benefit for employees.²⁵

Changes to governance arrangements

3.21 There was a range of views regarding the changes to the governance arrangements of the Seacare scheme. In particular, some submitters voiced concern that there would be a loss of maritime specific expertise in the oversight of the scheme,²⁶ and questions were raised about whether placing the scheme under the

20 The bill provides for injured seafarers to receive compensation until they reach retirement age at which point they must rely on the aged pension or their superannuation. Maritime Union of Australia, *Submission 4*, p. 40; Seafarers and Other Legislation Amendment Bill 2016, Notes on Clauses, *Explanatory Memorandum*, p. 30.

21 Maritime Union of Australia, *Submission 4*, p. 40.

22 Australian Council of Trade Unions, *Submission 5*, p. 6.

23 Maritime Industry Australia Limited, *Submission 1*, pp. 12–13.

24 Maritime Industry Australia Limited, *Submission 1*, p. 13.

25 Department of Employment, *Submission 2*, p. 9.

26 Australian Mines and Metals Association, *Submission 3*, p. 2; Maritime Union of Australia, *Submission 4*, pp. 39–40; Australian Council of Trade Unions, *Submission 5*, p. 5; Maritime Industry Australia Limited, *Submission 1*, p. 13.

purview of the Safety, Rehabilitation and Compensation Commission (SRCC) would hamper productivity and the resolution of claims.²⁷

3.22 The MUA argued that the seafaring is a unique industry which poses specific dangers and risks to employees, including:

- the operation and manipulation of heavy objects and machinery;
- living in the workplace;
- fatigue; and
- isolation.²⁸

3.23 In addition, the MUA submitted that because seafarers must be prepared to deal with an emergency at all times they are unable to return to work until they have returned to 100 per cent of their normal functioning and capabilities. The union's submission stated that 'under the broader administration of the SRCC and Comcare...seafarers will be under even more pressure to return to work before they are ready.'²⁹

3.24 MIAL raised concerns about the potential for a loss of expertise, arguing that 'where a separate industry scheme is to be maintained it defies logic not to retain industry expertise for the administration of it.'³⁰

3.25 The ACTU agreed with these sentiments and also contended that placing the scheme directly under the oversight of the SRCC would not streamline the claims process, but would rather make it more adversarial and 'add regulatory limitations.'³¹

3.26 The department submitted that the Seacare scheme would not be affected by loss of expertise because the bill allows the chairperson of the SRCC to establish an Advisory Group.³² Furthermore, the department explained that placing the scheme under the purview of the SRCC is a consolidation of many of the functions that the SRCC already carries out under the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). Consequently, it argued that the SRCC is well-placed to take on the Seacare scheme and it will make the administration of the scheme more efficient.³³

27 Australian Council of Trade Unions, *Submission 5*, p. 5.

28 Maritime Union of Australia, *Submission 4*, p. 11

29 Maritime Union of Australia, *Submission 4*, p. 12, 39–40.

30 Maritime Industry Australia Limited, *Submission 1*, p. 13.

31 Australian Council of Trade Unions, *Submission 5*, p. 5.

32 Department of Employment, *Submission 2*, p. 10.

33 Department of Employment, *Submission 2*, p. 10.

Committee view

3.27 There is widespread agreement that the Seacare scheme needs to be reformed.³⁴ Various governments over time have commissioned numerous independent expert reviews and undertaken consultation with industry and stakeholders to confirm the need for change.

3.28 After extensive consultation, there is no universal agreement on how the scheme should be structured or operated.³⁵ The bills package is designed to be a compromise option that safeguards the Seacare scheme and the Safety Net Fund, while allowing the industry to move forward with less confusion about coverage and providing value for taxpayers by stopping the states from shifting costs on to the Commonwealth Seacare scheme.³⁶

3.29 With regard to coverage, the committee is satisfied that the confusion and uncertainty arising from the Aucote decision and the evolving nature of seafaring will be remedied by the bills package. The committee also supports the opt-in arrangements that may simplify the operations of certain maritime operators.

3.30 The committee is of the view that the application of the WHS Act provides greater certainty to the maritime industry and is a positive step for the national framework of work health and safety regulations.

3.31 The committee considers that the associated right of entry provisions of the WHS Act will not hamper productivity in the sector as unions can already apply for a right of entry permit to vessels under the *Fair Work Act 2009*, and thus the bill is not introducing a right for unions that has not previously existed.³⁷ Nevertheless, given industry concerns, the government should monitor closely any adverse impacts on the sector in this regard.

3.32 The committee also supports the new workers' compensation arrangements, which overall rationalise the compensation framework while maintaining existing benefits for seafarers.

3.33 Furthermore, the committee considers that the proposed new governance arrangements for the Seacare scheme will not materially impact either employers through increased regulation or employees through lack of maritime-specific expertise. The bill's explanatory memorandum acknowledges that seafaring is a dangerous industry, thus demonstrating that the needs of industry have been at the forefront of the government's mind throughout the drafting of the legislation.³⁸ In addition, if the chair of the SRCC decides against appointing an advisory committee

34 Maritime Industry Australia Limited, *Submission 1*, p. 3; Department of Employment, *Submission 2*, p. 4; Australian Mines and Metals Association, *Submission 3*, pp. 1–2.

35 For an overview of the consultation process in the development of the bills package, see chapter 2 of this report and Department of Employment, *Supplementary Submission 2.1*.

36 Department of Employment, *Submission 2*, p. 5.

37 Seafarers and Other Legislation Amendment Bill 2016, *Regulation Impact Statement*, p. xxxv.

38 Seafarers and Other Legislation Amendment Bill 2016, *Explanatory Memorandum*, p. 8.

the reasons for this will have to be published in the SRCC's annual report, thus ensuring accountability in the operation of the scheme.³⁹ Again, this should be an issue that the government should monitor closely to ensure that the transition to the new governance arrangements is implemented in a manner that takes into account the specific attributes of the maritime sector.

Recommendation 1

3.34 The committee recommends that the Senate pass the package of bills.

Senator Bridget McKenzie

Chair

39 Seafarers and Other Legislation Amendment Bill 2016, Notes on Clauses, *Explanatory Memorandum*, p. 9.

