

AUSTRALIAN GREENS DISSENTING REPORT

1.1 The Seafarers Rehabilitation and Compensation and Other Legislation Amendment Bill 2015 is the government's legislative response to the implications of recent court decisions - Administrative Appeals Tribunal's (AAT) decision in *Aucote and Samson Maritime Pty Ltd* [2014] AATA 296 and the Full Federal Court's decision in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the Aucote decisions).

1.2 The Bill amends the *Seafarers Rehabilitation and Compensation Act 1992* and the *Occupational Health and Safety (Maritime Industry) Act 1993* limiting the coverage and eligibility for the Seacare scheme. The changes operate retrospectively.

1.3 All submissions to the Committee, with the exception of those made by the Australian Shipowners Association and the Department, which prepared the legislation, raised serious questions about the effect of the Bill on workers currently covered by Seacare.

1.4 The three registered organisations that represent workers in the maritime industry while recognising the need for a response to the Aucote decisions recommended that the bill not proceed in its current form.

1.5 Concerns that were highlighted included the lack of consultation on the drafting of the bill, the failure of successive governments to implement any of the recommendations of reviews into the area including the recent 2013 review and the inconsistency that could arise between the relevant legislation and the appropriate delineation between the Commonwealth and the states.

1.6 The Maritime Union of Australia (MUA) stated in their submission that:

[T]he Government has inexcusably been caught unprepared by the decision of the Full Federal Court in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC182 of December 2014 notwithstanding the decision of the Administrative Appeals Tribunal (AAT) *Aucote and Samson Maritime Pty Ltd* [2014] AATA 296 some 6 months earlier in May 2014. Consequently, we say the Government has responded with undue haste in bringing this Bill before the Parliament without consulting the stakeholders and seafarers who will be affected by the Bill and without proper consideration as to its implications.¹

1.7 The Australian Institute of Marine and Power Engineers (AIMPE) submitted:

[T]hat [the bill] 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.²

¹ Maritime Union of Australia, *Submission 1*, p. 2.

² AIMPE Submission p.5

1.8 The Australian Maritime Office Union (AMOU) and South Australia Unions, the peak trade union council for South Australia both supported the submission of the Maritime Union of Australia

1.9 The MUA submitted that there was no necessity for the immediate passage of the bill and that key stakeholders including the AMSA should be involved in a facilitated process to achieve a consensus on the appropriate legislative response to the Aucote decisions building on recommendations of previous reviews. Their submission states:

There is no immediate risk that requires a Bill to be rushed through the Parliament. It is highly improbable that there will be any significant number of new or unexpected claims arising from the Federal Court decision.

Furthermore, the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) has already determined in-principle to exempt some 59,500 ships and the seafarers engaged on those ships from the operation of the Seafarers Act, in a majority decision of 19 February 2015.³

Recommendation 1

1.10 Given the uncertainty and concern in the maritime industry regarding the effect of the bill and the evidence that, with proper consultation by the government, an appropriate response to the Aucote decisions could be developed the Australian Greens will not support the bill.

Recommendation 2

1.11 We recommend that the government withdraw the bill and instead engage in proper consultation on the appropriate legislative response to the Aucote decisions.

Senator Lee Rhiannon

Australian Greens

³ Maritime Union of Australia, *Submission 1*, p. 3.