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Workplace Relations Legislation Amendment Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Workplace Relations Legislation Amendment Bill 2002

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Workplace Relations Legislation Amendment Bill 2002

Date Introduced: 26 June 2002

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: Provisions which transfer operational responsibility commence 6 months after Royal Assent if not proclaimed to commence earlier.

Purpose

To effect a statutory transfer of operational responsibility for the Seacare Authority from the Department of Employment and Workplace Relations to Comcare.

Background

Commonwealth occupational health and safety, workers compensation and rehabilitation legislation

There are a number of Commonwealth statutes relating to occupational health and safety, workers compensation and rehabilitation.¹ However, in terms of 'workplace-based' legislation, there are two major Commonwealth schemes. The first relates to Commonwealth employees. The second covers seafarers (the Seacare Scheme) and is the subject of the amendments proposed by the Workplace Relations Legislation Amendment Bill 2002.

Commonwealth employees

The objects of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* [OSH(CE) Act] are preventive in nature and include securing the health, safety and welfare at work of Commonwealth employees and employees of Commonwealth authorities.²

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Commonwealth workers injured in the course of their employment are provided with workers' compensation benefits and rehabilitation programs under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

Among other things, the SRC Act establishes a Safety, Rehabilitation and Compensation Commission (SRCC). The SRCC has 10 members who meet at least three times per year. It carries out regulatory functions under the SRC Act—such as providing advice to the Minister³, producing guidelines for the determination of Comcare premiums⁴, and issuing policy guidelines.⁵

The SRCC also has functions under the OHS(CE) Act—for instance, it is required to ensure that statutory obligations are complied with, provides Ministerial advice, advises employers and employees about occupational health and safety, collects and analyses occupational health and safety information, formulates occupational health and safety policies and strategies, and accredits courses.⁶

Underpinning both statutory schemes is Comcare. Comcare is established under the SRC Act.⁷ Its functions include managing workers' compensation claims made by Commonwealth employees. Importantly, too, it provides administrative support under both the SRC Act and the OHS(CE) Act. For instance, Comcare has a statutory duty⁸ to supply secretariat services, assistance and staff to the SRCC which has neither its own staff nor its own budget.

Seacare Scheme

The *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act) is part of a Commonwealth legislative scheme covering occupational health, workers' compensation and rehabilitation for certain seafarers. The Seafarers Act is concerned with workers' compensation and rehabilitation. It applies to seafarers or trainees employed on 'prescribed ships'⁹ engaging in intra-territorial, interstate or overseas trade or commerce.

The Commonwealth occupational health and safety statute relevant to the maritime industry is the *Occupational Health and Safety (Maritime Industry) Act 1993* (Maritime Industry Act). It is designed to address the causes of workplace accidents and thus reduce workplace injury. Major elements in this Act are 'a consultative framework for the ship operator and maritime industry workers to cooperate in developing a safer working environment and better work practices ... [and a codification of] ... the duties of care to be observed by all who work on board ships and offshore industry mobile units'.¹⁰

The complementary relationship between the Seafarers Act and the Maritime Industry Act is underscored by the fact that the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority), which is established under the Seafarers Act¹¹, also has responsibilities under the Maritime Industry Act.¹²

Under the Seafarers Act, the Authority's functions include monitoring the operations of the Act, promoting high standards of claims management and effective rehabilitation

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procedures, cooperating with other bodies to reduce the incidence of work-related injuries, formulating occupational health and safety policies, accrediting occupational health and safety courses, and providing advice to the Minister.¹³ Additional functions conferred on the Authority by the Maritime Industry Act include ensuring that statutory obligations imposed by that Act are complied with, advising operators and employees on occupational health and safety matters, collecting and reporting on information relating to occupational health and safety, formulating policies and advising the Minister.¹⁴

Like the SRC, the Seacare Authority is a part-time body¹⁵ which does not employ its own staff. Its costs have been met through the budget of the Department of Employment and Workplace Relations.¹⁶ It has seven members.¹⁷ The Department of Employment and Workplace Relations has provided policy, administrative and secretariat support to the Seacare Authority, while the Australian Maritime Safety Authority has provided its inspectorate functions.¹⁸

Other legislative components of the Seacare Scheme include the *Seafarers Rehabilitation and Compensation Levy Act 1992* (Levy Act) and the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* (Levy Collection Act). The Seafarers Act enables a Fund to be established providing 'safety net' workers compensation coverage for seafarers with no identifiable employer.¹⁹ The Levy Act²⁰ enables a levy to be imposed on employers who engage seafarers on prescribed ships based on the number of seafarer berths on those ships. The Levy Collection Act²¹ contains procedures for the collection of the levy. The Seacare Authority performs functions under the Levy Act and administers the Levy Collection Act.²²

The Authority assumed new responsibilities in April 2002 when the Minister declared that the Authority perform the functions of the safety net Fund (responsible for workers' compensation liabilities of injured seafarers whose employer no longer exists, for example, where the employer has become insolvent). The function had been successfully managed by the Australian Maritime Industry Compensation Agency (AMICA) since 1993, but from January 2002 AMICA was unable to secure a policy of insurance for the Fund as required by legislation. The Minister had no legal alternative other than to declare the Authority as Fund manager in such circumstances.²³

Nexus between the Seacare and Commonwealth employees schemes

Historically, there has been a close nexus between the seafarers scheme and Commonwealth employees schemes. This nexus existed from early this century (the first *Seamen's Compensation Act* was enacted in 1909, the *Commonwealth Workmen's Compensation Act in 1912*) until 1971, when the *Compensation (Commonwealth Government Employees) Act* came into force.²⁴

The two schemes diverged somewhat with the enactment of the *Compensation (Commonwealth Government Employees) Act 1971*, legislation that gave injured Commonwealth employees access to rehabilitation programs. However, the two schemes

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continued to provide similar benefit levels to eligible workers. During the 1980s, when the Commonwealth employees scheme was reviewed there was also a review of the seafarers scheme by Professor Harold Luntz. The Luntz review terms of reference included 'the policy proposals being prepared for the amendment of the Compensation (Commonwealth Government Employees) Act and associated administrative changes and the desirability of consistency between the provisions of that Act and the Seaman's Compensation Act.'²⁵

The review of the Commonwealth employees scheme culminated in the enactment of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* (now the SRC Act).

The Seafarers Act, the then Government's response to Luntz Review, was designed to replace the *Seamen's Compensation Act 1911* with 'modern and comprehensive rehabilitation and compensation arrangements similar to those applicable to Commonwealth employees'.²⁶ It was also designed to restore 'the former nexus with the workers' compensation legislation applicable to Commonwealth employees ... consistent with the unitary compensation structure applying across public and private sector employment in all the state and territory workers compensation schemes'.²⁷

While the Seacare Scheme is modelled on the SRC Act and the OHA(CE) Act, there are said to be important differences between them related to the insurance arrangements of employers.²⁸ Other differences have emerged following amendments made to the *Safety, Rehabilitation and Compensation Act 1988* in 2001.²⁹ An [Issues Paper](#) published in March 2002 by the Seacare Authority comments that '[g]iven that the Seafarers Act is largely modelled on the SRC Act many of the [2001] amendments ... also are potentially necessary and relevant to the Seafarers Act'. The Issues Paper raised potential topics for legislative review. The submission date for comments was 6 August 2002.

Transfer of administrative responsibility for the Seacare Authority

In a letter to stakeholders dated 28 June 2002, the Chairperson of the Seacare Authority provided some background to the Government's decision to transfer responsibility for the Seacare Authority from the Department of Employment and Workplace Relations to Comcare:

The Minister has advised the Authority that there are three reasons for the new arrangements. First, he considers there are sound operational and governance reasons for this decision in that the location of the Seacare Authority with Comcare will avoid potential conflicts of interest that occur from time to time within his Department where officers who provide secretariat support to the Authority also provide policy advice to Government on the Seacare scheme.

Second, the current arrangements are considered to be inefficient given that a small departmental secretariat is attempting to support a small industry scheme when Comcare has the staff and expertise across the full range of workers' compensation and occupational health and safety (OHS) issues. The Minister has noted that availability of that expertise should serve to reduce costs for both the Government and employers in the Seacare scheme.

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Third, there are considered to be natural synergies between the Comcare and Seacare schemes. Both are industry-based schemes and the core business of each is injury prevention, and the administration of OHS, compensation and rehabilitation programmes. Comcare already supports the Seacare scheme in relation to the conduct of the internal review function on compensation decisions under the Seafarers Act; approval of rehabilitation providers; and the provision of impairment policy and assessment guidance for medical practitioners used in assessing injured seafarers.

The Minister has provided an assurance that the Seacare scheme will continue to be separate and autonomous...

The Authority has not yet had an opportunity to consider the implications of this decision, but I consider there will, overall, be advantages to the Authority and the industry.³⁰

The new administrative arrangements involving Comcare took effect on 1 July 2002.³¹ However, the statutory scheme, which refers to the Department³², has not yet been amended. That is the major purpose of the Bill.

Main Provisions

Amendments relating to the transfer of operational responsibility for the Seacare Authority from the Department of Employment and Workplace Relations to Comcare

Section 72A of the SRC Act requires Comcare to provide assistance and staffing resources for the Safety, Rehabilitation and Compensation Commission. **Item 2 of Schedule 1** imposes similar duties on Comcare in relation to the Seacare Authority.

Subsection 125(1) of the Seafarers Act enables the Seacare Authority to delegate powers or functions to certain senior Departmental officers. **Item 6** repeals subsection 125(1) and replaces it with a provision enabling the Seacare Authority to delegate powers or functions to the Chief Executive Officer of Comcare.

Item 8 enables the Chief Executive Officer of Comcare to delegate all or any of these powers or functions to his or her Deputy or a member of Comcare's staff.³³

Items 10-14 and 16 replace references in the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* to the Departmental Secretary with references to the Chief Executive Officer of Comcare.³⁴

Subsection 15(1) of the Seafarers Rehabilitation and Compensation Levy Collection Act enables the Secretary of the Department to delegate all or any of his or her powers or functions (other than the power to issue identity cards) to a senior officer of the Department. **Item 15** replaces subsection 15(1) with a provision enabling the CEO of Comcare to delegate to his or her deputy or to Comcare staff. The exception preventing delegation of the power to issue identity cards is preserved.

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Item 17 enables regulations to be made which relate to the transfer of operational responsibility for the Seacare Authority from the Department to Comcare.

Other amendments

Item 1 of **Schedule 1** is designed to rectify an error in the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*. The 2001 Act inadvertently repealed subsection 41A(2) of the SRC Act. Subsection 41A(2) had commenced on 1 October 2001. The inadvertent repeal took effect on 1 April 2002. **Item 1** re-inserts subsection 41A(2) into the SRC Act. **Item 1** will not be commenced retrospectively but rather on the date that the Bill receives Royal Assent.

Item 3 repeals section 94 of the SRC Act. Section 94 prevents Comcare entering into contracts worth more than \$500 000 without Ministerial approval.

Endnotes

- 1 These statutes include the *National Occupational Health and Safety Commission Act 1985*, the *Industrial Chemicals (Notification and Assessment) Act 1989*, the *Australian Radiation Protection and Nuclear Safety Act 1998*, and the *Navigation Act 1912*.
- 2 Section 3, *Occupational Health and Safety (Commonwealth Employment) Act 1991*.
- 3 Section 89B, *Safety, Rehabilitation and Compensation Act 1988*.
- 4 Section 97E, *Safety, Rehabilitation and Compensation Act 1988*.
- 5 Section 73A, *Safety, Rehabilitation and Compensation Act 1988*.
- 6 Section 12, *Occupational Health and Safety (Commonwealth Employment) Act 1988*.
- 7 Section 68, *Safety, Rehabilitation and Compensation Act 1988*.
- 8 Section 72A, *Safety, Rehabilitation and Compensation Act 1988*.
- 9 'Prescribed ships' are ships that are covered by Part II of the *Navigation Act 1912*—in other words, ships registered in Australia, engaged in the coasting trade or that have a majority Australian crew and are operated by a firm or company whose principal place of business is Australia. Section 10, *Navigation Act 1912*.
- 10 Second Reading Speech, Occupational Health and Safety (Maritime Industry) Bill 1993, House of Representatives, *Parliamentary Debates (Hansard)*, 24 November 1993, p. 3569.
- 11 Section 103, *Seafarers Rehabilitation and Compensation Act 1992*.
- 12 *ibid.*
- 13 <http://www.seacare.gov.au/aboutSeacare/functions.htm> (accessed 6 November 2002).
- 14 Section 9, *Occupational Health and Safety (Maritime Industry) Act 1993*.

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- 15 Section 110, *Seafarers Rehabilitation and Compensation Act 1992*.
- 16 Seafarers Safety, Rehabilitation and Compensation Authority, *Annual Report 2001-021*.
- 17 Section 109, *Seafarers Rehabilitation and Compensation Act 1992*.
- 18 <http://www.seacare.gov.au/aboutSeacare/membership.htm> (accessed 30 September 2002).
- 19 See section 96, *Seafarers Rehabilitation and Compensation Act 1992*. A person might not have an identifiable employer if, for example, the employer became insolvent.
- 20 The Act commenced on 10 April 2002 with Seacare as the Fund manager. See letter from the Seacare Chairperson dated 28 June 2002:
<http://www.seacare.gov.au/news/pdf/LetterChairtoStakeholdersReFund.pdf> (accessed 6 November 2002).
- 21 Also commenced on 10 April 2002.
- 22 Seafarer's Safety, Rehabilitation and Compensation Authority, [Annual Report 2001-02](#), p. 1.
- 23 *ibid.*, p. vii.
- 24 CCH Australia Ltd, *Australian Workers Compensation Guide*, p. 12, 642.
- 25 *Report of the Seaman's Compensation Review*, AGPS, 1988, p. 249 and *ibid.*
- 26 Mr Warren Snowden MP, Second Reading Speech, Seafarers Rehabilitation and Compensation Bill 1992, House of Representatives, *Hansard*, 14 October 1992, p. 2145.
- 27 *ibid.*
- 28 See Seacare Authority, *Review of Seacare Scheme Legislation 2002. Issues Paper*, 25 March 2002.
- 29 By the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*.
- 30 <http://www.seacare.gov.au/news/pdf/LetterChairtoStakeholdersReMovetoComcare.pdf> (accessed 6 November 2002).
- 31 <http://www.seacare.gov.au/news/default.asp#ComcareMove> (accessed 6 November 2002).
- 32 The relevant seafarer's legislation refers in various places to the Department, its officers and Secretary. By virtue of the *Acts Interpretation Act 1901* and the Administrative Arrangements Order the relevant Department is the Department of Employment and Workplace Relations.
- 33 This provision is needed for clarity because paragraph 34AB(b) of the *Acts Interpretation Act 1901* otherwise provides that the power of delegation cannot, itself, be delegated. The paragraph reads:
- Where an Act confers power on a person or body (in this section called the *authority*) to delegate a function or power:
- (b) the powers that may be delegated do not include that power to delegate.
- 34 For instance, subsection 14(1) of the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* enables the Secretary to issue an identity card to an authorised person. **Item 12** will enable the CEO of Comcare to exercise this power instead of the Secretary.

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