

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment

Occupational Health and Safety (Maritime Industry) Act 1993
Section 4A

*Occupational Health and Safety (Maritime Industry) (Prescribed Ship – Norfolk Island)
Declaration 2016*

Background

The *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) regulates work health and safety for a defined part of the Australian maritime industry. The OHS(MI) Act operates in conjunction with the *Seafarers Rehabilitation and Compensation Act 1992*. Together the Acts establish a scheme known as the ‘Seacare scheme’.

In March 2015, the Australian Government announced comprehensive reforms on Norfolk Island, including the extension of most Commonwealth laws to the island. As part of these reforms, on 1 July 2016 the *Territories Legislation Amendment Act 2016* will amend the geographical definition of ‘Australia’ in the *Acts Interpretation Act 1901* to include Norfolk Island. This means most references to ‘Australia’ in Commonwealth legislation, where it is used in a geographical sense, will include Norfolk Island.

The purpose of this declaration—the *Occupational Health and Safety (Maritime Industry) (Prescribed Ship—Norfolk Island) Declaration 2016*—is to prevent any expansion of the Seacare scheme upon commencement of this amendment. This is an interim measure to maintain the status quo. The Commonwealth is currently consulting with maritime industry stakeholders on broader reforms to the Seacare scheme, including clarifying future coverage to address this and other issues in respect of coverage of the scheme.

This declaration operates in conjunction with the *Seafarers Rehabilitation and Compensation (Prescribed Ship—Norfolk Island) Declaration 2016*.

Current operation of the Seacare scheme

Section 6 of the OHS(MI) Act specifies the application of the Act in relation to a ‘prescribed ship’ (or ‘prescribed unit’) which is engaged in territorial, inter-state or international trade or commerce, as well as other more specific classes of ship. Section 4 of the OHS(MI) Act defines ‘prescribed ship’ to be a ship to which Part II of the *Navigation Act 1912* (*Navigation Act*) would apply if that Act had not been repealed—other than a Government ship or a ship or unit to which the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* applies.

Part II of the *Navigation Act* applies to (among other things) ‘a ship of which the majority of the crew are residents of Australia and which is operated by any of the following...:’

- (i) a person who is a resident of, or has his or her principal place of business in, Australia;
- (ii) a firm that has its principal place of business in Australia; or
- (iii) a company that is incorporated, or has its principal place of business, in Australia.’

From 1 July 2016, the use of ‘Australia’ in the *Navigation Act* (as it is defined in the *Acts Interpretation Act 1901*) will include Norfolk Island, and could have the effect of capturing ships, not previously covered by the Seacare scheme, where the majority of crew are residents of Norfolk Island or where the operator of the ship is based in Norfolk Island.

The effect of the declaration

This declaration provides that a ship with a majority crew of Norfolk Island residents, and/or a Norfolk Island based operator, not otherwise covered by the scheme, is not a ‘prescribed ship’.

The declaration achieves this by declaring that a ship is not a prescribed ship if it would not be covered by paragraphs 10(a) or 10(b) of the *Navigation Act* (that is, it is not registered in Australia and/or not engaged in coastal trading), and is not a ship to which subsections 6(3) or 6(3A) of the OHS(MI) Act would apply, but would usually be covered by paragraph 10(c) of the *Navigation Act* if that Act had not been repealed, and is:

- (i) crewed by a majority of residents of Norfolk Island and/or
- (ii) is operated by a person who is a resident of Norfolk Island or has their principal place of business in Norfolk Island; or a firm that has its principal place of business in Norfolk Island; or a company that is incorporated, or has its principal place of business, in Norfolk Island.

Employees on these ships continue to be covered by existing work health and safety arrangements.

Consultation

This declaration has been made following consultation with the Department of Infrastructure and Regional Development which is coordinating the changes to Norfolk Island governance. The Seafarers Safety, Compensation and Rehabilitation Authority (Seacare Authority) was also consulted. The Department sent an explanation of the proposed declaration to the Seacare Authority for consideration at their meeting and they had no objection to the declaration being made. The current organisations represented on the Authority are the Australian Maritime Safety Authority, Comcare, the Australian Maritime Officers Union, the Australian Institute of Marine and Power Engineers, Swire Pacific Ship Management (Australia) Pty Ltd and SeaRoad Shipping Pty Ltd. Since the declaration is maintaining existing arrangements, further consultation was not considered appropriate.

The Office of Best Practice Regulation was consulted regarding this declaration and indicated that a Regulation Impact Statement was not required (OBPR ID 20850).

This instrument will come into effect on 1 July 2016 at the same time as amendments to the definition of 'Australia' in the *Acts Interpretation Act 1901*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Occupational Health and Safety (Maritime Industry) (Prescribed Ship – Norfolk Island) Declaration 2016

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) regulates work health and safety for a defined part of the Australian maritime industry. The OHS(MI) Act operates in conjunction with the *Seafarers Rehabilitation and Compensation Act 1992*. Together the Acts establish a scheme known as the ‘Seacare scheme’.

Whether a ship is covered by the Seacare scheme is determined, in part, by whether that ship is a ‘prescribed ship’. A ‘prescribed ship’ is a ship to which Part II of the repealed *Navigation Act 1912* would have applied—other than a ‘government ship’ or a ship or unit to which the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* applies. Part II of the *Navigation Act 1912* applies to ships where a majority of the crew are residents of Australia and the operator is based in Australia.

In March 2015, the Australian Government announced a reform package for Norfolk Island, including the extension of most Commonwealth laws to the island. As part of these reforms, on 1 July 2016, the definition of ‘Australia’ in the *Acts Interpretation Act 1901* will be amended to include Norfolk Island.

This could mean that ships not previously covered, but with a majority crew or operated from Norfolk Island are brought within the coverage of the scheme. The declaration will provide that such ships are not prescribed ships and preserve the current coverage of the scheme.

Human rights implications

The right to safe and healthy working conditions is part of the set of interdependent rights relating to work and conditions of work set out in articles 6, 7 and 8 of the *International Convention on Economic Social and Cultural Rights* (ICESCR). Article 7(b) of ICESCR requires the States Parties to recognise the right of everyone to safe and healthy working conditions.

Australia principally complies with this obligation through a system of Commonwealth, state and territory work health and safety laws, which have been harmonised across the majority of jurisdictions through the adoption of model laws. The OHS(MI) Act represents work health and safety laws for a defined part of the maritime industry.

By affecting the coverage of the OHS(MI) Act, the Declaration engages the right to safe and healthy working conditions. The Declaration will ensure the coverage of the OHS(MI) Act is not unintentionally altered by the Norfolk Island reforms, and maintain the status quo for employees.

In place of the OHS(MI) Act, employees will continue to be covered by the work health and safety protections under state or territory laws including the Norfolk Island *Employment Act 1988*. While the duties of care in the OHS(MI) Act may be expressed in slightly different terms to the Norfolk Island *Employment Act* or the Model WHS Act (adopted by the Commonwealth and most states and territories), all Acts seek to codify the common law duty of care based on the recommendations of the 1972 UK Parliamentary Inquiry known as the ‘Robens Committee Report’. The declaration supports workers’ right to safe and health working conditions by clarifying arrangements.

Any limitations on the right to safe and healthy working conditions is necessary to achieve the legitimate objective of preserving the coverage of the Seacare scheme and existing rights of employees potentially affected by the amendment to the *Acts Interpretation Act*. As such, the declaration is consistent with the right to safe and healthy working conditions.

Conclusion

The Legislative Instrument is compatible with human rights because it does not negatively impact on human rights.