

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment

Seafarers Rehabilitation and Compensation Act 1992

Subsection 3A(2)

Seafarers Rehabilitation and Compensation (Prescribed Ship — Intra-State Trade) Declaration 2017

Overview

This instrument, the *Seafarers Rehabilitation and Compensation (Prescribed Ship — Intra-State Trade) Declaration 2017*, replaces the *Seafarers Rehabilitation and Compensation (Prescribed Ship— Intra-State Trade) Declaration 2015(No. 2)* (the current instrument) which will cease to have effect on 23 June 2017. The instrument is being remade in its current form to maintain the status quo while legislative reform is pursued.

Background

The *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) provides workers' compensation and rehabilitation arrangements for seafarers in a defined part of the Australian maritime industry. The Seafarers Act operates in conjunction with the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) to establish the 'Seacare scheme'. As of July 2016 the scheme was known to apply to 219 vessels and approximately 6000 employees (a small portion of approximately 80,000 domestic seafarers in Australia).

Prior to the decision in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the *Aucote* decision), coverage of the Seacare scheme was historically understood by maritime industry regulators and participants to operate primarily by reference to the form of trade or commerce engaged in by a ship. Ships engaged in interstate or international trade or commerce were understood to be covered by the Seacare scheme, while ships engaged in intrastate trade or commerce were understood to be covered by the legislation of the state in which they operate.

The Federal Court held in *Aucote* that the scheme applied to seafarers employed by a trading, financial or foreign corporation on a prescribed ship engaged in intrastate trade, substantially broadening coverage of the Seacare scheme to potentially over 10, 000 Australian registered ships.

Several interim measures were taken in 2015 to address the uncertainty caused by the *Aucote* decision. The retrospective effect of the decision was addressed by the *Seafarers Rehabilitation and Compensation and Other Legislation Amendment Act 2015*. The prospective application of the Seacare scheme is clarified by the current declaration and two multi-ship exemptions issued by the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) under section 20A of the Seafarers Act.

The combined effect of the current declaration and the exemptions is that ships understood to be outside the coverage of the Seafarers Act prior to the Federal Court's *Aucote* decision are not covered by the Seafarers Act.

Effect of Declaration

Clause 1 repeals the current instrument.

Clause 2 declares that a foreign ship engaged in intrastate trade is not a prescribed ship for the purposes of the Seafarers Act. These ships will continue to be subject to relevant state workers' compensation laws.

Clause 3 ensures this declaration will not affect ships which are subject to subsection 19(1A) of the Seafarers Act because they are covered by a declaration under subsections 8A(2) or 8AA(2) of the now repealed *Navigation Act 1912*.

The declaration will not affect the application of the Seafarers Act under subsection 19(1AA). This is because the declaration only applies to ships to which paragraph 10(c) of the *Navigation Act 1912* would have applied, and not ships to which paragraph 10(a) or (b) would have applied:

- it will not affect ships engaged in coastal trading under a general licence—because these are ships to which either paragraph 10(a) or 10(b) would have applied; and
- it will not affect ships engaged in coastal trading under an emergency licence which are registered on the Australian General Shipping Register—because these ships are registered in Australia and so are ships to which paragraph 10(a) would have applied.

This instrument will take effect on the day after it is registered on the Federal Register of Legislation.

Consultation

Maritime industry stakeholders and the co-regulators of the Seacare scheme – the Seacare Authority and the Australian Maritime Safety Authority - support the remaking of the declaration pending legislative reform.

The Office of Best Practice Regulation has advised a Regulation Impact Statement is not required (OBPR ID 22374).

Statement of Compatibility with Human Rights

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

Seafarers Rehabilitation and Compensation (Prescribed Ship — Intra-State Trade) Declaration 2017

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

This instrument, the *Seafarers Rehabilitation and Compensation (Prescribed Ship — Intra-State Trade) Declaration 2017*, replaces the *Seafarers Rehabilitation and Compensation (Prescribed Ship — Intra-State Trade) Declaration 2015(No. 2)* (the current instrument) which will cease to have effect on 23 June 2017. The instrument is being remade in its current form to maintain the status quo while legislative reform is pursued. The instrument remains an interim measure supported by industry and unions to address issues arising from the Federal Court decision in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the *Aucote* decision).

As with the current instrument, the instrument engages the right to social security in Article 9 of the *International Convention on Economic Social and Cultural Rights*. The Committee considered the current instrument in its *Twenty-second Report of the 44th Parliament* and *Twenty-seventh Report of the 44th Parliament* and concluded any limitation on the right to social security may be proportionate to the legitimate objective sought to be achieved.

As with the current declaration this instrument will operate in concert with exemptions granted by the Seacare Authority to maintain the coverage of the Seacare scheme as it was traditionally understood prior to the *Aucote* decision.

The declaration does not create any change, but merely continues the interim measures taken in 2015, to bring stability to the scheme for maritime industry employers and employees and preserve the status quo while legislative reform continues to be pursued. The *Seafarers and Other Legislation Amendment Bill 2016 (Seafarers Bill)* is currently before the Parliament and would remove the need for continued reliance on the instrument to clarify the coverage of the Seacare scheme.

Conclusion

The Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations continue to be reasonable, necessary and proportionate.