

SEAFARERS REHABILITATION AND COMPENSATION (COST RECOVERY)
REGULATIONS 2020

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industrial Relations
under the *Seafarers Rehabilitation and Compensation Act 1992*

PURPOSE AND OPERATION OF THE INSTRUMENT

The Seacare scheme provides workers' compensation and work health and safety protection to approximately 4400 maritime employees on 170 vessels. The scheme is established by the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act) and the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Employers may make certain determinations relating to workers' compensation claims under the Seafarers Act. Under section 78 of the Seafarers Act, the claimant may request the employer to reconsider a determination. On receipt of a request, the employer must either arrange for an appropriate industry panel (if any) (see paragraph 78(4)(a)) or arrange with Comcare for a Comcare officer to assist the employer with the reconsideration. With that assistance, the employer must reconsider the determination and affirm, revoke or vary the determination.

Subsection 141(1) of the Seafarers Act enables Comcare to charge the employer the prescribed fee for these services. Subsection 141(2) of the Seafarers Act provides that the regulations may make provision for the recovery of such fees as are prescribed for the provision of a Comcare officer's services for the purposes of section 78 of the Seafarers Act. Section 143 of the Seafarers Act provides that the Governor-General may make regulations, not inconsistent with the Seafarers Act, prescribing matters required or permitted by the Seafarers Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Seafarers Act.

From July 2000 to October 2018, the prescribed fee for the purposes of section 78 of the Seafarers Act was \$85.00 (excluding GST) per hour spent by the Comcare officer assisting, or travelling in connection with providing assistance to, an employer to reconsider a determination, plus travel and accommodation expenses incurred by the officer in assisting an employer to reconsider a determination. The fee was prescribed by the *Seafarers Rehabilitation and Compensation Regulations 1993*, which sunset (that is, automatically repealed by operation of the *Legislation Act 2003*) in October 2018.

The *Seafarers Rehabilitation and Compensation (Cost Recovery) Regulations 2020* (the Regulations) prescribe a fee of \$206.80 (including GST) per hour to reflect Comcare's costs in providing the services under section 78 of the Seafarers Act. As Comcare officers generally provide assistance under section 78 of the Seafarers Act 'on the papers', travel and accommodation expenses are not prescribed by the Regulations.

The fee of \$206.80 (including GST) per hour has been determined on a full cost recovery basis in accordance with the Australian Government Charging Framework (the Charging Framework). The fee reflects the Cost Recovery Implementation Statement for reconsideration of determinations under the Seafarers Act prepared by Comcare in accordance with the Charging Framework.

Details of the Regulations are set out at [Attachment A](#).

The Statement of Compatibility with Human Rights is set out at Attachment B.

The Regulations will commence on the day after being registered on the Federal Register of Legislation.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

CONSULTATION

Consultation was undertaken with employers in the Seacare scheme and with the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority). The Seacare Authority is a statutory tripartite body which is constituted by a chairperson, deputy chairperson, two members representing employees, two members representing employers and the Chief Executive Officer of the Australian Maritime Safety Authority. Two submissions were received: one submission opposed the proposed increase; the other submission did not oppose the proposed increase.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (OBPR ID: 24218).

NOTES ON SECTIONS

Section 1 – Name

This section provides that the title of the instrument is the *Seafarers Rehabilitation and Compensation (Cost Recovery) Regulations 2020*.

Section 2 – Commencement

The Regulations will commence on the day after being registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the *Seafarers Rehabilitation and Compensation (Cost Recovery) Regulations 2020* are made under the *Seafarers Rehabilitation and Compensation Act 1992*.

Section 4 – Definitions

This section defines terms used in the Regulations.

Section 5 – Cost recovery

This section provides that the fee prescribed for the purposes of subsection 141(1) of the *Seafarers Rehabilitation and Compensation Act 1992* is \$206.80 (including GST) per hour, with the fee applied on a pro rata basis per part hour of service provided.

Section 6 – Recovery of fees for assistance provided by a Comcare officer

This section enables Comcare to recover the fee, as a debt due to Comcare, in a court of competent jurisdiction.

Section 7 – Application provision

This section clarifies that the fee applies prospectively, including to any services provided by a Comcare officer in relation to an ongoing reconsideration if the arrangement between the employer and Comcare under paragraph 78(4)(b) is made after the commencement of the Regulations.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Seafarers Rehabilitation and Compensation (Cost Recovery) Regulations 2020

This disallowable 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 Seacare scheme provides workers' compensation and work health and safety protection to approximately 4400 maritime employees on 170 vessels. The scheme is established by the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act) and the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Employers may make certain determinations relating to workers' compensation claims under the Seafarers Act. Under section 78 of the Seafarers Act, the claimant may request the employer to reconsider a determination. On receipt of a request, the employer must arrange for an appropriate industry panel (if any) (see paragraph 78(4)(a)) or arrange with Comcare for a Comcare officer to assist the employer with the reconsideration. With that assistance, the employer must reconsider the determination and affirm, revoke or vary the determination.

Subsection 141(1) of the Seafarers Act enables Comcare to charge the employer the prescribed fee for these services. Subsection 141(2) of the Seafarers Act provides that the regulations may make provision for the recovery of such fees as are prescribed for the provision of a Comcare officer's services for the purposes of section 78 of the Seafarers Act. Section 143 of the Seafarers Act provides that the Governor-General may make regulations, not inconsistent with the Seafarers Act, prescribing matters required or permitted by the Seafarers Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Seafarers Act.

The *Seafarers Rehabilitation and Compensation (Cost Recovery) Regulations 2020* prescribe a fee of \$206.80 (including GST) per hour to reflect Comcare's costs in providing the services under section 78 of the Seafarers Act. The fee of \$206.80 (including GST) per hour has been determined on a full cost recovery basis in accordance with the Australian Government Charging Framework (the Charging Framework). The fee reflects the Cost Recovery Implementation Statement for reconsideration of determinations under the Seafarers Act prepared by Comcare in accordance with the Charging Framework.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The instrument is compatible with human rights.

The Hon Christian Porter MP

Minister for Industrial Relations