

**SEAFARERS REHABILITATION AND COMPENSATION (SPECIFIED LAWS)**  
**AMENDMENT DECLARATION 2020**

**EXPLANATORY STATEMENT**

Issued by authority of the Minister for Industrial Relations

under subsection 139(7) of the *Seafarers Rehabilitation and Compensation Act 1992*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) provides workers' compensation and rehabilitation arrangements for a defined part of the Australian maritime industry. The Seafarers Act operates in conjunction with the *Occupational Health and Safety (Maritime Industry) Act 1993* to establish the 'Seacare scheme'.

Subject to the Seafarers Act, liability to make compensation payments arises in respect of the following:

- an injury (as defined by section 3) suffered by an employee if that injury results in death, incapacity for work or impairment (subsection 26(1));
- medical treatment that is obtained in relation to that injury (subsections 28(1) and 28(2));
- household services or attendant care services obtained as a result of that injury (sections 43 and 43A); or
- loss of, or damage to, 'property used by an employee' (section 3 and subsection 27(1)).

If compensation is paid or payable under the Seafarers Act, to avoid double compensation some or all of that compensation may have to be repaid or offset against other compensation payments.

Under the Seafarers Act, compensation must be repaid or offset in accordance with section 139 if 'State compensation' recoverable under a 'specified law' is paid to or for the benefit of anyone for:

- an injury suffered by an employee or a deceased employee; or
- the loss of, or damage to, property used by an employee.

'State compensation' means compensation recoverable under a 'specified law', which can be a State or Territory law. A 'specified law' is a law of a State or Territory that provides for the payment of compensation (other than workers' compensation) and is declared by the Minister by legislative instrument to be a 'specified law' for the purposes of section 139 of the Seafarers Act. Section 139A deals separately with State and Territory laws relating to workers' compensation.

The *Seafarers Rehabilitation and Compensation (Specified Laws) Declaration 2019* (Specified Laws Declaration) declares the relevant 'specified laws' under subsection 139(7) of the Seafarers Act.

The purpose of this instrument is to add the *Motor Accident Injuries Act 2019* (ACT) (MAI Act) to the list of specified laws outlined in Schedule 1 of the Specified Laws Declaration. The MAI Act is a Territory law that came into effect on 1 February 2020, under which compensation is recoverable for injury, or loss or damage to certain property. It establishes a scheme of compulsory third-party

insurance and provision of benefits and support relating to the death of or injury to persons as a consequence of motor accidents.

## **CONSULTATION**

Consultation was not undertaken in relation to this instrument because the amendment made by this instrument is machinery in nature and will not substantially alter existing arrangements.

This amendment will update the Specified Laws Declaration to include the MAI Act which is a Territory law that has been introduced to replace an existing specified law – the *Road Transport (Third-Party Insurance) Act 2008* (ACT). This amendment updates the Specified Laws Declaration to ensure it captures the ACT's new scheme of compulsory third party insurance for motor vehicle accidents. It does not introduce a new type of compensation to the Specified Laws Declaration.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation was consulted regarding this instrument and indicated that a Regulation Impact Statement is not required (OBPR ID: 42774).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

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

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

### **Seafarers Rehabilitation and Compensation (Specified Laws) Amendment Declaration 2020**

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

#### **Overview of the legislative instrument**

The *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) relevantly provides workers' compensation and rehabilitation arrangements for a defined part of the Australian maritime industry.

The *Seafarers Rehabilitation and Compensation (Specified Laws) Declaration 2019* (Specified Laws Declaration) specifies the State and Territory laws that are 'specified laws' under subsection 139(7) of the Seafarers Act. The purpose of the Specified Laws Declaration is to prevent the double receipt of compensation under the Seafarers Act and a State or Territory law for the same injury or loss of, or damage to, property used by the employee.

This legislative instrument updates the list of specified laws declared in the Specified Laws Declaration to include the *Motor Accident Injuries Act 2019* (ACT) (MAI Act). The MAI Act is a Territory law under which compensation is recoverable for injury, or loss or damage to certain property. It establishes a scheme of compulsory third-party insurance and provision of benefits and support relating to the death of or injury to persons as a consequence of motor accidents.

## **Human rights implications**

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* provides for the right of everyone to social security, including social insurance. General Comment 19 by the Committee on Economic, Social and Cultural Rights elaborates on Article 9, stating that the ‘States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work’.<sup>1</sup>

Workers’ compensation is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries occurring as a result of their employment.

The Seafarers Act operates to ensure an employee (or a dependant of an employee) is compensated for loss they suffer due to an injury, or the loss of, or damage to, property used by the employee.

An employee (or the dependant of an employee) who chooses to recover an amount of compensation under a specified law will still be entitled to receive an amount of compensation at least equal to the amount that is payable under the Seafarers Act.

Section 139 of the Seafarers Act operates to ensure that an employee (or the dependant of an employee) cannot ‘double dip’ by being compensated twice under two different laws for the same injury, or loss or damage to certain property.

## **Conclusion**

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Christian Porter MP**

Minister for Industrial Relations

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<sup>1</sup> Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art. 9)*, U.N. Doc E/C.12/GC/19 (2008), [17].

## **NOTES ON SECTIONS**

### **Section 1 – Name**

Section 1 provides that the title of the instrument is the *Seafarers Rehabilitation and Compensation (Specified Laws) Amendment Declaration 2020*.

### **Section 2 – Commencement**

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Section 3 – Authority**

Section 3 provides that the instrument is made under subsection 139(7) of the *Seafarers Rehabilitation and Compensation Act 1992*.

### **Section 4 – Schedule**

Section 4 provides that each instrument that is specified in the Schedule to the instrument is amended or repealed as set out in the applicable items in that Schedule and any other item in the Schedule to the instrument has effect according to its terms.

### **Schedule 1—Amendments**

#### ***Seafarers Rehabilitation and Compensation (Specified Laws) Declaration 2019***

Schedule 1 of this instrument amends the Declaration at Schedule 1 of the *Seafarers Rehabilitation and Compensation (Specified Laws) Declaration 2019*.

#### **Item 1 – Schedule 1 (after table item 16)**

Item 1 of Schedule 1 adds the *Motor Accident Injuries Act 2019* (ACT) to the list of specified laws in the *Seafarers Rehabilitation and Compensation (Specified Laws) Declaration 2019* as table item 16A.

The *Motor Accident Injuries Act 2019* (ACT) is a Territory law under which compensation is recoverable for injury, or loss or damage to certain property. It establishes a scheme of compulsory third-party insurance and provision of benefits and support relating to the death of or injury to persons as a consequence of motor accidents.