**SEAFARERS REHABILITATION AND COMPENSATION DIRECTIONS 2023**

**EXPLANATORY STATEMENT**

Issued by authority of the Minister for Employment and Workplace Relations

under section 107 of the *Seafarers Rehabilitation and Compensation Act 1992*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

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

The Seafarers Safety, Rehabilitation and Compensation Authority (the Seacare Authority) is established by section 103 of the Seafarers Act. The Seacare Authority has a number of functions and powers under the Seafarers Act, including the power to grant exemptions from the operation of the Seafarers Act, the *Seafarers Rehabilitation and Compensation Levy Act 1992* and the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* under section 20A of the Seafarers Act.

Pursuant to section 107 of the Seafarers Act the Minister may, by notice in writing given to the Chairperson, give a direction to the Seacare Authority with respect to the performance of its functions or the exercise of its powers.

Since 6 September 2006, the Seacare Authority has been subject to the Ministerial direction contained in the *Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)*.

Pursuant to section 107 of the Seafarers Act, and subsection 33(3) of the *Acts Interpretation Act 1901*, this instrument repeals the *Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)* and provides four new directions to the Seacare Authority with respect to the performance of its functions and the exercise of its powers. Under this instrument the Minister directs the Seacare Authority to amend its Exemption Guidelines to specify that:

1. The integrity and ongoing viability of the Seacare scheme is a primary factor in determining all applications for exemption from the operation of the Seafarers Act under section 20A of that Act. This guideline provides for an overarching objective of the Seacare Authority in determining such applications.
2. A reduction in workers’ compensation entitlements for affected seafarers is a primary factor in determining not to grant an exemption under section 20A of the Seafarers Act where the Seacare Authority is satisfied that a reduction in entitlements would be a likely outcome for the employees on a particular ship, determined on a case by case basis.
3. Where an applicant requests an exemption from the application of the Seafarers Act under section 20A on the grounds that workers’ compensation insurance under the Seafarers Act is unavailable, a primary factor in determining the application is whether the Seacare Authority is reasonably satisfied that the applicant has taken all reasonable steps to obtain insurance or indemnification for the applicant’s workers’ compensation liability under the Seafarers Act.
4. The applicant has state or territory insurance in all jurisdictions in which it operates, is a primary factor in determining all applications for exemption from the operation of the Seafarers Act under section 20A of that Act. This direction ensures that the employer holds policies in each jurisdiction that would apply to a worker whose employment would be captured by the Seacare scheme if the exemption were not granted.

The directions do not prevent the Seacare Authority from specifying further guidelines it considers necessary in respect of its determination of applications for exemptions under section 20A of the Seafarers Act, including the provision of guidance on the Seacare Authority’s approach to the application of guidelines made in accordance with these directions, provided that any such guidelines are not inconsistent with these directions. Such guidelines may include, for example, for the provision of exemptions where a ship is taking a voyage that is not its regular trading or operating pattern.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* but is not subject to disallowance (see item 2 of section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*) or sunsetting (see item 3 of section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

This instrument commences on 1 July 2023.

**CONSULTATION**

Consultation was undertaken with stakeholders including Comcare, the Seacare Authority, scheme employers, the maritime unions (the Maritime Union of Australia, the Institute of Marine and Power Engineers and the Australian Maritime Officers Union), the Australian Council of Trade Unions, Maritime Industry Australia Limited and the Australian Resources and Energy Employer Association (AREEA) over the period February to June 2023.

In making this instrument, the Minister has considered the feedback provided through that consultation process.

**REGULATION IMPACT ANALYSIS**

The Office of Impact Analysis was consulted regarding this instrument and indicated that preparation of impact analysis is not required (OIA23-04538).

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

**Seafarers Rehabilitation and Compensation Directions 2023**

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 *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act) provides workers’ compensation and rehabilitation arrangements for approximately 2,500 seafarers in a defined part of the Australian maritime industry.

The Seafarers Safety, Rehabilitation and Compensation Authority (the Seacare Authority) is established by section 103 of the Seafarers Act. The Seacare Authority has a number of functions and powers under the Seafarers Act, including the power to grant exemptions form the operation of the Seafarers Act, the *Seafarers Rehabilitation and Compensation Levy Act 1992*; and the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* under section 20A of the Seafarers Act.

Pursuant to section 107 of the Seafarers Act the Minister may, by notice in writing given to the Chairperson, give a direction to the Seacare Authority with respect to the performance of its functions or the exercise of its powers.

On and from 6 September 2006, the Seacare Authority has been subject to the Ministerial directions contained in the *Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)*.

Pursuant to section 107 of the Seafarers Act and subsection 33(3) of the *Acts Interpretation Act 1901*, this instrument repeals the *Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)* and provides three new directions to the Seacare Authority. Under this instrument the Minister directs the Seacare Authority to amend its Exemption Guidelines to specify that:

1. the integrity and ongoing viability of the Seacare scheme is a primary factor in determining all applications for exemption from the operation of the Seafarers Act under section 20A of that Act; and
2. a reduction in workers’ compensation entitlements for affected seafarers is a primary factor in determining not to grant an exemption under section 20A of the Seafarers Act where the Seacare Authority is satisfied that a reduction in entitlements would be a likely outcome for the employees on a particular ship; and
3. where an applicant requests an exemption from the application of the Seafarers Act under section 20A on the grounds that workers’ compensation insurance under the Seafarers Act is unavailable, a primary factor in determining the application is whether the Seacare Authority is reasonably satisfied that the applicant has taken all reasonable steps to obtain insurance or indemnification for the applicant’s workers’ compensation liability under the Seafarers Act.
4. the applicant has state or territory insurance in all jurisdictions in which it operates, is a primary factor in determining all applications for exemption from the operation of the Seafarers Act under section 20A of that Act.

**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’.[[1]](#footnote-1)1

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.

This instrument engages but does not limit human rights. By repealing the *Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)* and making new general directions intended to bolster the Seacare Authority’s scrutiny of exemption applications, this instrument ensures that the jurisdictional coverage of the Seafarers Act is maintained in accordance with the legislative coverage provisions as much as possible.

**Conclusion**

This legislative instrument is compatible with human rights because it does not raise any human rights issues.

**The Hon Tony Burke MP**

Minister for Employment and Workplace Relations

**Attachment A**

**NOTES ON SECTIONS**

**Section 1 – Name**

Section 1 provides that the title of the instrument is the *Seafarers Rehabilitation and Compensation Directions 2023.*

**Section 2 – Commencement**

Section 2 provides that the instrument commences on 1 July 2023.

**Section 3 – Authority**

Section 3 provides that the instrument is made under section 107 of the *Seafarers Rehabilitation and Compensation Act 1992.*

**Section 4 – Definitions**

Section 4 provides the definitions of terms used in the instrument.

**Section 5 – Directions**

Section 5 provides four Ministerial directions to the Seafarers Safety, Rehabilitation and Compensation Authority, with respect to the performance of its functions and the exercise of its powers.

**Section 6 – Schedule**

Section 6 provides that each instrument that is specified in Schedule 1 to the instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

**Schedule 1 – Repeals**

Schedule 1 to the instrument repeals the *Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)* in its entirety.

1. 1 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]. [↑](#footnote-ref-1)