



AIMPE



**REVIEW OF THE SPECIFIED DISEASES & EMPLOYMENT
DECLARED FOR THE PURPOSES OF
THE *SEAFARERS REHABILITATION & COMPENSATION ACT*
1992**

**JOINT SUBMISSION OF THE AUSTRALIAN INSTITUTE OF
MARINE & POWER ENGINEERS and THE AUSTRALIAN
MARITIME OFFICERS UNION**

The Australian Institute of Marine & Power Engineers (AIMPE) and the Australian Maritime Officers Union (AMOU) thank the Department for the opportunity to make the following submission relating to the Terms of Reference for the Review.

The AIMPE and AMOU propose that the Terms of Reference be amended to:

- Whether the SRC Act Instrument is an appropriate model for the Seafarers Act Instrument in view of the different employment connection tests imposed under each Act for diseases.
- Whether any additional occupational diseases should be included for the Seacare Scheme.
- If an occupational disease should be included what, if any, employment related causative factors should apply in relation to that disease?
- What is the epidemiological data to validly support the incorporation of a minimum employment period(s) test in relation to occupational diseases?
- Whether any minimum employment period test should be omitted or reduced for the Seacare Scheme, in view of the seafarer's presence, and thus likely exposure

(whether working or not) on board vessels for 24 hours per day and for rostered work periods of 4 to 6 weeks at a time.

- Should any change be accompanied by grandfathering provisions protecting the prior rights of existing seafarers?

Additional Occupational Diseases

The AIMPE and AMOU have no objection to the consideration of adding additional occupational diseases to the prescribed list for the Seacare scheme as part of the Terms of Reference.

The AIMPE and AMOU submit that all deemed diseases lists establish a presumption that a factual causation issue has been proven to a particular standard. The function of the prescription of specified diseases and employment in the *Seafarers Rehabilitation and Compensation Act 1992 – Notice of Declarations and Specifications* (‘the Seacare Instrument’) is to create a presumption that employment of the specified kind *did contribute in a material degree* to the contraction of the specified disease.¹

The legislation governing the Comcare scheme provides that “*significant degree* means a degree that is substantially more than material”². This is a legislative prescription of a principle of causation of injury which departs from, and is a far higher bar, than the ordinary common law standard where a material contribution is often sufficient.³

The AIMPE and AMOU submit that it is plainly evident that a “a material degree” and “a degree that is substantially more than material” are not equivalent standards.⁴ Accordingly, the selection of specified diseases and employment for the purposes of the Seacare scheme should adopt the more beneficial standard that is legislated in that scheme. The epidemiological standard to be applied in such selection ought to be whether or not the data supports a view that it is more likely than not that employment of particular type contributes

¹ *Seafarers Rehabilitation and Compensation Act 1992*, s.10(1).

² *Safety, Rehabilitation and Compensation Act 1988*, s. 5B(3)

³ See *XLRC and Comcare (Compensation)* [2019] AATA 3553 at [8] – [19]

⁴ See *XLRC and Comcare Op. Cit.*

in a material degree to the contraction of the particular disease, without regard to whether the contribution is also “substantially more than material”.

Further the AIMPE and AMOU have no objection to the re-categorisation from general disease groups to actual diseases if it is considered that the approach would aid clarification.

Minimum Employment Periods

The AIMPE and AMOU strongly object to the introduction of minimum employment periods for the Seacare scheme. The proposed changes to the Seacare Scheme will substantially affect our member’s rights to claim under Seacare for asbestos and respiratory diseases.

It will change the current “reverse onus” whereby liability is automatically accepted under section 10 (a) of the Seacare Act, 1992 (unless the employer can show that the employment did not contribute to a significant material degree) without the proposed mandatory time of exposure being 5 years.

These proposed provisions will reduce our member’s rights that currently exist and make it harder to claim for these diseases under the Seacare Act.

The legislative recognition that some diseases have a close occupational link is a feature of most Australian workers' compensation statutes. In the applicable cases, the employee is relieved from the burden of establishing that his/her disease was causally contributed to by the employment. It is only fair and appropriate that this be so for the reasons raised by Professor Driscoll in his 2015 report⁵:

“... Where there is strong evidence of a causal connection between the exposure and the disease, there seems little point in expending time and resources requiring each individual worker to prove that connection.”

The AIMPE and AMOU submit that environmental considerations in the seafaring industry need to be factored into the review regarding minimum employment or exposure periods. It is because Marine Engineers, Deck Officers and seafarers generally spend their working

⁵ *Deemed Diseases in Australia*, Professor Tim Driscoll, Safe Work Australia, August 2015, page 10.

hours in and around engine rooms, bridge and loading bays/areas which are spaces of close confines without any or adequate ventilation and that marine engineers, deck officers and seafarers work with or have been exposed to asbestos because of their duties associated with insulation, brake linings, manifolds, gaskets etc. Working on a ship also involves living on the ship. It is different to a shoreside worker who may have similar duties but when they finish those duties they go home, or to a Park, which is a different environment. Working on a ship does not afford that opportunity. The work environment on Ships at Sea is also inherently a non-stable work environment. The effect of pitching, rolling etc creates hazards not experienced on shore. The hazards encountered while working at Sea do not subside when their daily duties are completed.

The time frame the Government is prescribing does not compare to the work marine engineers, deck officers and seafarers do and the nature of their exposure as opposed to say Commonwealth employees of those under the Comcare scheme who may have, in their general work environment, been exposed which is why they made a longer period of time frame for a link between the exposure of the onset of the condition before liability can be accepted for an asbestos disease.

The AIMPE and AMOU further submit that the introduction of minimum employment periods will result in increased litigation into an area or process designed as a non-litigious safety net scheme.

Conclusion

1. The introduction of minimum employment exposure periods represents a fundamental change in the deemed disease provisions which will have the likely effect of disadvantaging injured seafarers.
2. Reliance upon minimum employment exposure periods runs contrary to established epidemiological standards which instead rely upon cumulative exposure.
3. As the presumption under Section 10(a) is a rebuttable assumption, adequate protection already exists for insurers/employers to dispute liability if they have medical evidence to suggest that there was no, or insufficient, occupational exposure to cause the disease.

4. There is no basis either on scientific or on economic grounds to overturn the existing arrangements for deemed diseases under the Seacare scheme.

Yours Sincerely,



Nathan Niven
AIMPE Senior National Organiser



Jarrod Moran
AMOU Senior Industrial Officer

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