



**MARITIME
INDUSTRY
AUSTRALIA**
L I M I T E D

Attorney General's
Department

Submission: SPECIFIED
DISEASES AND EMPLOYMENT
FOR THE PURPOSES OF THE
SEAFARERS REHABILITATION
AND COMPENSATION ACT
1992

About MIAL

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About MIAL

Maritime Industry Australia Ltd (MIAL) is the voice and advocate for the Australian maritime industry. MIAL is at the centre of industry transformation, coordinating and unifying the industry and providing a cohesive voice for change.

MIAL represents Australian companies which own or operate a diverse range of maritime assets from international and domestic trading ships; floating production storage and offloading units; cruise ships; offshore oil and gas support vessels; domestic towage and salvage tugs; scientific research vessels; dredges; workboats; construction and utility vessels and ferries.

We work with all levels of government, local and international stakeholders ensuring that the Australian maritime industry is heard. We provide leadership, advice and assistance to our members spanning topics that include workforce, environment, safety, operations, fiscal and industry structural policy.

MIAL provides a full suite of maritime knowledge and expertise for operators of both Regulated Australian Vessels and Domestic Commercial Vessels. This gives us a unique perspective.

MIAL's vision is for a strong, thriving and sustainable maritime enterprise in the region.

Seafarers Rehabilitation and Compensation (Specified Diseases and Employment) Instrument

Introduction

1. MIAL appreciates the opportunity to comment on the draft instruments proposed to replace the Notice of Specifications and Declarations (1993) which until its expiry had applied under the *Seafarers Rehabilitation and Compensation Act 1992* (SRC Act). MIAL represents companies whose vessels are covered by the SRC, as well as some of those whose vessels are currently exempted from the scheme by an exemption granted to multiple vessels by the Seacare Authority.

Background

2. MIAL is aware that previously the Government had proposed to apply the deemed diseases legislative instrument for the *Safety, Rehabilitation and Compensation Act 1988* (Comcare Act) to the SRC Act, but this did not receive stakeholder support. Instead as a temporary measure, the Notice of Specifications and Declarations insofar as it related to deemed diseases applying to the SRC Act was remade.
3. Under the SRC Act certain diseases to which employment was a material contributing factor are deemed as compensable. This is slightly different from the Comcare Act where the threshold relates to a significant contribution of employment. The new instrument purports to distinctly define the diseases, whereas the previous instrument was drafted so as to focus on the cause of the disease rather than its name. It also contains a length on time during which certain employment and exposure to types of material may demonstrate that employment has contributed to a disease. Given the effect of the instrument is to effectively remove the requirement for an applicant to establish that employment contributed to a material degree to the disease, it is appropriate to include a minimum employment period. It is also important to note that in the absence of a minimum employment period being undertaken, an applicant may still be eligible to receive compensation if they can establish employment contribution to a material degree.
4. The format largely replicates changes that were made to the *Safety Rehabilitation and Compensation Act (Specified Diseases and Employment) Instrument*, which are part of the Comcare scheme. On its face it is easier and simpler to understand as an instrument used to establish contribution (which is presumably a rebuttable presumption if it can be established that employment did not contribute to a material degree to the disease).

Application to the Seacare scheme

5. The explanatory statement used for changes to the Comcare legislation is referenced by the Department as part of this consultation. There does not appear to be any account taken of the types of exposure in employment that are likely for seafarers as opposed to the broad range of commonwealth public servants covered by the Comcare scheme. While the consultation referenced by the department refers to research and expertise from Safe Work Australia, it does not appear that specific consideration was given to the occupational conditions of seafarers.

Matters raised as part of the review

6. We understand that an epidemiologist (Dr Driscoll) has been engaged to assist with the drafting of this instrument, and is looking to determine the following in relation to what an instrument under the SRC should consider if based on an instrument drafted for use within the Comcare scheme. This includes:

- 6.1. Whether any additional occupational diseases should be included for the Seacare scheme.

- 6.2. If an occupational disease should be included, what employment-related causative factors and what, if any, minimum employment period should apply in relation to that disease.

- 6.3. Whether any minimum employment period(s) should be amended for the Seacare scheme.

- 6.4. If the minimum employment period for a particular disease should be amended from the SRC Act Instrument for the Seacare scheme, what minimum employment period should apply in relation to that disease.

7. Our understanding is that when tasked with identifying the appropriate approach under the Comcare Act in a report provided in 2017, Dr Driscoll was required to:

- 7.1. Provide the risk ratings for the cancers and other diseases being considered for inclusion in the Comcare Scheme Deemed Diseases list; and

- Provide incident rates for cancers and other diseases in the population.

- 7.2. Apply a study explaining linkage between particular diseases and specific occupations to provide occupational exposure data information on exposure prevalence for various exposures relevant to particular diseases in relevant occupations.

7.3. Provide advice to the Department on the duration of exposure to causative agents which would be sufficient to cause each of the diseases being considered for inclusion in the Comcare Scheme Deemed Diseases list.¹

8. It would appear based on the terms of reference above that Dr Driscoll is being asked to assume that the instrument created for the Comcare Act is effectively appropriate for the Seacare Scheme. This is despite work performed by workers and the conditions under which such work is performed is markedly different under the two schemes.
9. While MIAL acknowledges that there would be a utilisation of resources to do this, the Government continues to maintain this separate niche scheme, underwritten by a small section of the maritime industry, yet fails to consider specific industry conditions when making instruments which apply to it. It seems the terms of reference provided to Dr Driscoll for the purposes of the Instrument under the Seacare Act are much narrower and proceed on the basis that the instrument applying to the Comcare Act is appropriate to the Seacare Act unless stakeholders advise otherwise. This approach seems to suggest that a niche separate scheme for seafarers is unnecessary if the approach of government is to apply rationale developed for other schemes to the Seacare scheme.

While the Seacare Scheme remains a separate distinct scheme, legislation that applies to it should appropriately reflect the industry

10. While MIAL has no specific medical expertise to offer Dr Driscoll, we offer the following comments in relation to the terms of reference document on which feedback has been sought.
- 10.1. Clarifying the types of workplaces to whom this scheme applies. This will enable Dr Driscoll to have a better understanding of the potential for exposure in the workplace, acknowledging while many employees in the scheme will live in the environment in which they work, the separation of workspaces and accommodation spaces and the lengthy consistent periods away from the workplace. This will be particularly important for determining the minimum periods of employment for specific diseases, which MIAL submits should be a part of the instrument.

¹ Comcare Scheme Deemed Diseases support information 2017..Final Report pg 7

10.2. The number of diseases and potential exposures under the Comcare Scheme would be representative of a far greater number and type of workplaces. The terms of reference for Dr Driscoll specifically ask if additional diseases should be added. It does not ask whether diseases listed need not appear on a scheme which applies only to people who work on certain types of ships. In MIAL's submission Dr Driscoll should be asked whether any disease as included in the Comcare Instrument should not appear in the specified diseases instrument that will apply to the SRC Act. As this scheme applies to ~180 ships and ~3800 employees (although exact coverage is frustratingly unclear) the diseases contained in the instrument should relate to exposure in a shipboard environment. For example, the specification of Tuberculosis describes an employment setting, for the purposes of the instrument which would not be found when working on a ship. It, as well as a number of other specified diseases should not be contained within an instrument which is designed specifically for the Seacare scheme. If it is not relevant to the work performed in the Seacare scheme, there is no basis for including it in an instrument which has the effect of deeming causation through employment circumstances and minimum employment periods where the necessary employment circumstances do not exist.

10.3. If it is necessary and convenient to have a list of specified diseases which will be deemed as related to work where that work has involved exposure to certain materials, it makes sense to ensure that a minimum period of employment is established to demonstrate the link between employment and the disease to a material degree. Unlike within the Comcare scheme workers covered by the Seacare scheme will spend lengthy period on board the vessel whether it be in working spaces or accommodation and recreation spaces, as well as spending equally lengthy periods away from the workplace. While it is usual to work 5 days per week, 8 hours per day, 48 weeks of the year, in many cases those working on ships in the Australian industry work on board for weeks at a time (usually between 4-5 weeks), with equal time away from the workplace (i.e. 26 weeks on, 26 weeks off over the course of 12 months).

10.4. MIAL supports the inclusion of minimum employment periods which are based on empirical evidence, as far as possible taking into account the likely exposure of those workers covered by the Scheme being seafarers. This should also take into account the construction standards applied to vessels from both a working and living space perspective. MIAL has no specific comments in relation to the recommended periods nominated by Dr Driscoll for the purposes of the Comcare Act but assume that the workplace conditions for seafarers will be considered.

