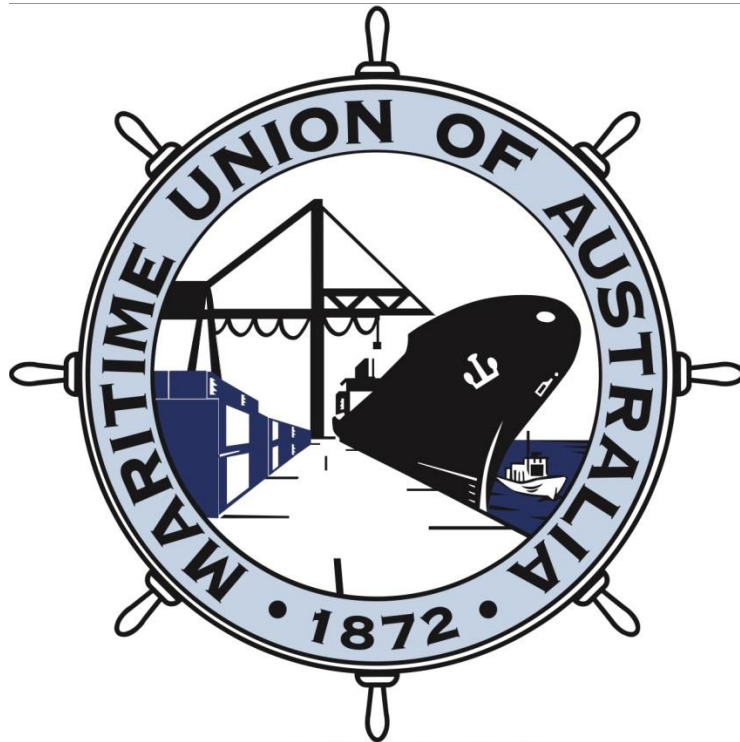


**MUA Submission:**

**Terms of reference for a review**

**of Seacare Specified Diseases**



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*Attorney General's Department*

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## Introduction

The MUA represents some 13,000 Australian seafarers, stevedores, and other maritime workers, equating to more than 90% of Australia's maritime workforce. Our seafaring membership work in the domestic shipping trade, offshore oil and gas industry, and on voyages outside of Australian waters. The MUA is an affiliate of the 4.5 million member International Transport Workers' Federation. The MUA was formed in 1993 with merger of the Seamen's Union of Australia and the Waterside Workers Federation of Australia, which trace their formation to 1906 and 1872 respectively.

The overwhelming majority of Seacare claimants are MUA members, due to much higher rates of injuries for seafarers working on deck and in the catering department.

## Proposed Terms of Reference

We note the proposed Terms of Reference for a examination of a new specified diseases in the Seacare scheme, as follows:

- Whether any additional occupational diseases should be included for the Seacare scheme.
- 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.
- Whether any minimum employment period(s) should be amended for the Seacare scheme.
- 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.

We strongly object to the inclusion of a minimum employment period in any new listing of specified diseases in the Seacare scheme, and in the Terms of Reference for the review.

The use of a minimum employment period in the Comcare scheme is not founded in epidemiological evidence, but has only been included because Comcare asked for it in the Terms of Reference for the 2017 report.<sup>1</sup> Minimum employment periods were not included in the 2015 Safe Work Australia report prepared by Professor Driscoll, because of 'the difficulty in characterising what "sufficient" is or how it would be demonstrated. This would make it more difficult for a worker whose disease has arisen from a particular exposure to make a claim, something that the Deemed Diseases approach is designed to minimise.'<sup>2</sup> We outline this shift in position in greater detail in our submission to the Department's consultation on the Seacare's sunseting instruments in December 2018/January 2019.

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<sup>1</sup> *Deemed Diseases Approach – Information to support the update of the Comcare Scheme's current Deemed Diseases legislative instrument*, Professor Tim Driscoll, Safe Work Australia, August 2017, p.7.

<sup>2</sup> *Deemed Diseases in Australia* by Professor Tim Driscoll, August 2015, Safe Work Australia, p.16

In our view the Terms of Reference set out below would be more appropriate for a proper scientific assessment and update of the approach to specified diseases in the Seacare scheme:

1. 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.
2. Whether any additional occupational diseases should be included for the Seacare Scheme.
3. If an occupational disease should be included what, if any, employment related causative factors should apply in relation to that disease?
4. What is the epidemiological data to validly support the incorporation of a minimum employment period(s) test in relation to occupational diseases?
5. 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.

The rationale for the proposed terms of reference is outlined below.

### Legislative requirements

Under Comcare, workers get compensation if the disease 'was contributed to, *to a significant degree*, by the employees' employment,<sup>3</sup> where "*significant degree* means a degree that is substantially more than material"<sup>4</sup>.

However in the Seacare scheme, the *Seafarers Rehabilitation and Compensation Act 1992 – Notice of Declarations and Specifications* ('the Seacare Instrument') creates a presumption that employment of the specified kind *did contribute in a material degree* to the contraction of the specified disease.<sup>5</sup>

It is plainly evident that a "a material degree" and "a degree that *is substantially more than material*" are not equivalent standards.<sup>6</sup> This must be taken into account for any review.

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<sup>3</sup> *Safety, Rehabilitation and Compensation Act 1988*, s. 5A(a), 5B, 14.

<sup>4</sup> *Safety, Rehabilitation and Compensation Act 1988*, s. 5B(3)

<sup>5</sup> *Seafarers Rehabilitation and Compensation Act 1992*, s.10(1).

<sup>6</sup> See *XLRC and Comcare Op. Cit.*

## **Additional diseases**

We would be pleased to see the evidence for any diseases to add. It would be useful for the review to examine the claims made under the Seacare scheme. Our understanding is that the overwhelming majority of disease claims are associated with asbestos exposure. While asbestos is banned in Australia, asbestos is regularly found in vessels built or maintained in overseas shipyards and imported to Australia, with several cases of this found just in 2020.

Concerns about occupational diseases raised recently by our seafarer members include:

- significant and widespread concerns about mental health, which have been intensified by the pandemic
- exposure to the firefighting foams PFAS or AAF
- exposure to bushfire smoke and PM2.5 particulates
- exposure to radioactive materials used in the extraction of offshore oil and gas
- exposure to crystalline silica (quartz) from materials such as magnetite (iron ore) shipped in large quantities out of Cape Preston and other locations, including on transshipment vessels with constant exposure
- two vessels riddled with Legionnaires' Disease
- a member who we believe acquired Guillain-Barre syndrome on a vessel.

## **Minimum employment periods**

In general, 'the relevant measure' of exposure to a disease 'is usually the total exposure (cumulative exposure) rather than just a length of exposure or a level (concentration or intensity) of exposure; that is, a higher exposure (in terms of the concentration in air or liquid, or the force required for movement) for a shorter time is assumed to have a similar risk to a lower exposure for a longer time.'<sup>7</sup> This makes minimum exposure periods not scientifically based, but simply a policy measure that makes it more difficult for a worker to get compensation for an employment-related disease.

The report previously prepared by Professor Driscoll included numerous references to diseases where there is little to no information on exposure. In such circumstances, it is particularly problematic to include a minimum employment period.

One particularly problematic minimum exposure period is that of one year for mesothelioma. The fact is that brief periods of days or weeks of exposure can materially contribute to the development of the condition. In these circumstances, we cannot understand why a minimum period of one year has been recommended:

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<sup>7</sup> *Deemed Diseases Approach – Information to support the update of the Comcare Scheme's current Deemed Diseases legislative instrument*, Professor Tim Driscoll, Safe Work Australia, August 2017, p.19

Malignant Mesothelioma. There is no published information to provide strong guidance on a minimum exposure period to asbestos, but it is clear that brief periods (days to weeks) of significant exposure can meaningfully increase the risk of developing mesothelioma. Therefore, a minimum period of one year ... is recommended for asbestos and malignant mesothelioma.<sup>8</sup>

Similarly for pneumoconiosis, which the Professor notes can arise from a very brief period of heavy exposure, the recommendation is made of a minimum exposure period of 5 years. We cannot understand how this is a valid scientific recommendation particularly with cases rising recently in Australia. The professor says:

Pneumoconiosis. Development of pneumoconiosis can arise from, and soon after, a brief period (a few weeks to a few months) of exposure. However, such exposure should no longer occur in Australia and typically the relevant exposure period would be much longer. Therefore, it would be reasonable to accept a minimum exposure period of five years.<sup>9</sup>

In our view, 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. The introduction of such a requirement runs contrary to how similar provisions operate in other Australian jurisdictions and how the provisions operated under the SRC Act prior to 2017. Reliance solely upon minimum exposure periods runs contrary to established epidemiological principles which instead rely upon cumulative exposure (incorporating latency, intensity and length of exposure). In addition, there is no sound medical evidence to support the minimum exposure periods for many of the diseases.

We note that because the presumption of connection to employment under Section 10(1) is rebuttable, 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.

### **Seafarers' employment**

While seafarers may only work 8 or 12 hours a day, for most vessels in the Seacare scheme seafarers live on board the vessel for 4-6 weeks at a time (although the lengths of many swing times have increased to 8 weeks during the pandemic). This means they are exposed to any substances on the vessel even during their 'off' time, particularly if it is a dusty cargo

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<sup>8</sup> *Deemed Diseases Approach – Information to support the update of the Comcare Scheme's current Deemed Diseases legislative instrument*, Professor Tim Driscoll, Safe Work Australia, August 2017, p.21

<sup>9</sup> *Deemed Diseases Approach – Information to support the update of the Comcare Scheme's current Deemed Diseases legislative instrument*, Professor Tim Driscoll, Safe Work Australia, August 2017, p.23

carried in a very large volume, in which case it can pervade other areas of the ship seafarers may us during their off-time, and even enter seafarers' accommodation.

Most vessels with union agreements have 1:1 leave arrangements, meaning that for every day a seafarer is on board the vessel, they have one day at home. On vessels without union agreements workers could be on the vessels for longer periods, potentially 9 months of the year. This is double or triple more hours in the workplace per year than workers in more conventional work arrangements (Table 1).

**Table 1:** Annual hours of workplace exposure under different working arrangements.

<b>Work arrangements</b>	<b>Hours of workplace exposure per year</b>
Worker working 38 hours per week for 48 weeks	1,824 hours
Seafarer on a 1:1 roster (on a vessel for 6 months of the year)	4,368 hours
Seafarer on a vessel 9 months of the year	6,552 hours