

# A review of the specified diseases and employment declared for the purposes of the *Seafarers Rehabilitation and Compensation Act 1992*

## Comcare Submission

### Introduction

This is Comcare's submission to the Attorney-General's Department (AGD) review of the specified diseases and employment instrument (the proposed instrument) declared for the purposes of the *Seafarers Rehabilitation and Compensation Act 1992*.

### Background to the submission

#### *Comcare's role and reason for submission*

Comcare administers the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) and its relevant instruments. This includes the *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017* (2017 instrument). Comcare also provides expert advice and support services to the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare authority).

It is proposed that the 2017 instrument will be replicated for the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act) as part of the review of the instrument that provides for specified disease and employment under the Seafarers Act.

As there is the potential for changes to be made to the proposed instrument and the purpose and structure of this instrument and the 2017 instrument are similar, Comcare considers itself a stakeholder in this process.

#### Comparison of legislative provisions

Section 10 of the Seafarers Act and Section 7 of the SRC Act provides presumptive workers' compensation coverage for specified diseases. These two sections are similar in their wording, with a few specific differences:

- The Seafarers Act requires the employee to be engaged in employment of that kind in the maritime industry, whereas the SRC Act requires the employee to be engaged by the Commonwealth or a licensed corporation in employment of that kind.
- The Seafarers Act deems employment to have contributed to the contraction of the disease to a material degree, whereas the SRC Act deems employment to have significantly contributed to the contraction of the disease.

Despite these differences, the sections have aligned purposes and the current *Seafarers Rehabilitation and Compensation Act 1992 – Notice of Declarations and Specifications* specified diseases (Seacare deemed disease instrument) aligned with the superceded Comcare *Safety, Rehabilitation and Compensation (Specified Diseases) notice 2007* (2007 instrument) with two minor differences: the order of diseases – item one of the 2007 instrument appears as item four in the Seacare deemed disease instrument; and item 21 of the Seacare deemed disease instrument is

worded slightly differently to the 2007 instrument, with the inclusion of 'asphyxiants:' in the Seacare deemed disease instrument.

### Analysis of claims

Available data relating to claims made under the Seafarers Act show that, from 2005 to present, there have been a total of 94 claims made with Types of Occurrence Coding System (TOOCS) codes which may relate to deemed disease conditions under the Seacare deemed disease instrument, with 78 of those claims accepted. This data highlights how many potential deemed disease claims may have been made in the last 15 years **(Refer to Attachment A)**.

The data recorded in relation to the Seafarers scheme does not indicate if any of the above claims was accepted using the deemed disease provisions. The 'Nature of injury description' for recording claims data is also broadly worded in some cases and may include conditions not covered as deemed diseases. For example:

- 'Bursitis' is a common condition and is only covered as a deemed disease if it occurs due to vibrations, but the data does not record the specific cause of condition.
- 'Other diseases of skin and subcutaneous tissue not elsewhere classified' is broadly worded and may include claims not covered as deemed diseases.

These two examples have the highest number of claims attributed to them.

### AGD review terms of reference and Comcare response

The Terms of Reference for the review of Seafarers Act specified diseases and employment instrument proposes that the new instrument be the same as Comcare's 2017 instrument.

Comcare supports this approach. The 2017 instrument, which is based on the SafeWork Australia deemed disease report, is easier for users to apply than the current Seacare deemed disease instrument. It utilises a contemporary approach which is consistent with similar instruments used across Australia.

The Terms of Reference also advises that the Department intends to engage an epidemiologist to consider scientific and any other relevant evidence to advise on:

- 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.

Comcare makes no specific comments in relation to the above, except to note that any decisions made should be clearly supported by relevant and appropriate epidemiological evidence. In this regard, we note that in 2016 and 2017 the Department undertook a similar review of the 2007 instrument. Dr Driscoll was engaged to review the 2007 instrument to:

1. A. Provide the risk ratings for the cancers and other diseases included in the deemed diseases list; and  
B. Provide incident rates for cancers and other diseases in the population.

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.
3. Provide advice to the Department on the duration of exposure to causative agents which would be sufficient to cause each of the diseases on the Deemed Diseases list.

The results of this review were utilised in the development of the 2017 instrument. As this review was undertaken four years ago, we support the Department's approach to ensure the instrument is based on the most current epidemiological advice.

In conclusion, Comcare supports the proposed approach to make a legislative instrument for the Seacare scheme that is similar to the current one under the SRC Act. Comcare's experience with the new SRC Act legislative instrument is that it is easier to use, is based on best-practice principles and supported by detailed epidemiological evidence.

## Attachment A

Nature of Injury Description (TOOCS)	TOOCS code	Occupational Disease	# of claims 2005 - present
Bursitis	541	Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves).	23
Other diseases of skin and subcutaneous tissue not elsewhere classified	758	Skin diseases caused by physical, chemical or biological agents not included under other items.	14
malignant neoplasm of mesothelium (mesothelioma)	861	Lung cancer or mesotheliomas caused by asbestos	12
Poisoning and toxic effects of substances	302	Diseases caused by beryllium or its toxic compounds.	6
		Diseases caused by phosphorus or its toxic compounds.	
		Diseases caused by chromium or its toxic compounds.	
		Diseases caused by manganese or its toxic compounds.	
		Diseases caused by arsenic or its toxic compounds.	
		Diseases caused by mercury or its toxic compounds.	
		Diseases caused by lead or its toxic compounds.	
		Diseases caused by fluorine or its toxic compounds.	
		Diseases caused by carbon disulphide.	
		Diseases caused by toxic halogen derivatives of aliphatic or aromatic hydrocarbons	
		Diseases caused by benzene or its toxic homologues.	
		Diseases caused by toxic nitro- and amino-derivatives of benzene or its homologues.	
		Diseases caused by nitro-glycerine or other nitric acid esters.	
		Diseases caused by alcohols, glycols or ketones.	
		Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide.	
Viral diseases, not classified elsewhere	836	Occupational infectious or parasitic diseases.	4
Other malignant neoplasms and carcinomas	866	Diseases caused by beryllium or its toxic compounds.	4
		Diseases caused by cadmium or its toxic compounds.	
		Diseases caused by chromium or its toxic compounds.	
		Diseases caused by arsenic or its toxic compounds.	
		Diseases caused by toxic halogen derivatives of aliphatic or aromatic hydrocarbons	
		Diseases caused by ionising radiation.	

		Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	
		Lung cancer or mesotheliomas caused by asbestos	
Contact dermatitis	741	Skin diseases caused by physical, chemical or biological agents not included under other items.	3
Asbestosis	783	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor causing the resultant incapacity, impairment or death.	3
Other malignant neoplasms of skin	863	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	3
Effects of weather, exposure, air pressure and other external causes not elsewhere classified	319	Diseases caused by work in compressed air.	1
Diseases of skin and subcutaneous tissue, unspecified	759	Skin diseases caused by physical, chemical or biological agents not included under other items.	1
Asthma	781	Occupational asthma caused by sensitising agents or irritants.	1
Other respiratory conditions due to substances	787	Bronchopulmonary diseases caused by hard-metal dust.	1