Senate Standing Committee on Economics

Inquiry into Schedule 4 of the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011*

Submission by the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)

Introduction

The Seacare Authority is the regulator for a set of workers' compensation and occupational health and safety arrangements applicable to defined seafarer employees in the Australian maritime industry, referred to as the Seacare scheme.

The Seacare Authority is established under the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act). Under the Seafarers Act, the Seacare Authority is responsible for monitoring the operations of the Act and promoting high operational standards of claims management and effective rehabilitation procedures by employers.

The Seacare scheme

The Seacare scheme consists of 36 private sector shipping companies operating 240 vessels engaged in the international and inter-state shipping trade and in servicing off-shore oil and gas facilities. Some 6500 seafarers are covered by the Seacare scheme. In 2009-10, 243 workers' compensation claims were accepted by scheme employers, of these 28 were from medical expenses only and 215 involved lost time incapacity claims.

Workers' compensation benefits under the Seafarers Act are similar to those applying under the Comcare scheme. Benefit arrangements are characterised by incapacity payments for the duration of the injury up to the age of 65 and on going medical payments regardless of age. Incapacity benefits are payable at 100 percent of the pre-injury normal weekly earnings for the first 45 weeks and then reducing to a minimum of 75 per cent for the remainder of the time off work depending on the hours worked .

Under the Seafarers Act, employers are responsible for the liability resulting from the workers' compensation claims under the Act. Employers are required to obtain a policy of insurance or indemnity from an authorised insurer or a Protection and Indemnity Club (P&I Club) for the full extend of this liability. Currently, five insurers (Allianz, CGU, QBE, Liberty and Vero) provide workers' compensation insurance policies for the Seacare scheme. No P&I Clubs currently provide indemnity for Seafarers Act claims.

While employers are the determining authority for workers' compensation claims under the Act, in reality this function is often delegated to the employer's insurer or claims agent. The payment of incapacity and other benefits is either made by the insurer or the employer depending on the nature of this relationship. A feature of the insurance arrangements in the Seacare scheme is the high levels of deductibles (level of excess) that some employers negotiate with their insurer. Employers with high deductibles would typically pay workers' compensation benefits directly to their employees.

Working arrangements in the shipping industry are different from most other industries. The normal work pattern consists of an onboard 'swing': a period of between four to six weeks on

the vessel, followed by an on shore 'off swing' of a similar period. The off swing time is to recompense for the 24 hours shift pattern on board vessels.

The Bill

The *Streamlining Notification Processes for Compensation Recipients* budget measure was announced in the 2010–11 Budget. As a result, the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011* (the Bill) was introduced into the House of Representatives on 23 March 2011.

The Bill seeks to amend social security legislation to make it a legal requirement that compensation payers, such as insurance companies and statutory authorities, notify Centrelink at least 14 days before any personal injury compensation payments are made, or the rate of compensation changed.

In summary, schedule 4 of the Bill requires compensation payers to notify Centrelink at least 14 days prior to:

- Payment of a lump sum of "recompense"
- First payment of periodic payments
- Payment of arrears of periodic payments
- Changing the amount of periodic payments
- Changing the period of periodic payments
- A final periodic payment

A recent amendment to the Bill noted that the provisions outlined above do not have to be adhered to where a person/insurer has entered into a notification agreement with the Secretary of FAHCSIA.

The policy intent of the Bill is to reduce the risk of individuals incurring unnecessary debt to the Commonwealth and receiving income support payments to which they or their partner are not entitled. While this may be a desirable objective, there are some concerns that the Seacare Authority has identified in the way that this policy intent has been put into practice via the Bill. The Seacare Authority welcomes the opportunity to work with FAHCSIA to resolve these concerns so that the policy intent of the Bill can be fully realised.

Seacare Authority Concerns

The Seacare Authority has a number of concerns with the Bill as currently drafted. These concerns are outlined below.

- Compliance burden – The Bill places a considerable compliance burden on private sector insurers and employers. While a number of the Seacare scheme insurers also provide workers' compensation insurance in other jurisdictions and would already be familiar with the reporting requirements in the Bill, the employers in the Seacare scheme are in substantial ignorance of the requirements. By the nature of their operations, insurers may be better placed to comply; shipping employers would find compliance difficult and costly.

- Notification requirements – The Bill requires prior notification of certain payments by compensation payers to claimants. The ability of compensation payers in the Seacare scheme to comply with these provisions is problematic without impacting on the recipients of such payments. In some cases payments may have to be delayed in order to comply with the 14 day prior notification requirement.

- Alternative arrangements – The Bill foreshadows that compensation payers may enter into a suitable agreement with the Secretary of FAHCSIA in lieu of the notification provisions. While this would appear to be an attractive alternative to notification, insufficient information is available a present to confirm this as a suitable alternative. The Seacare

Authority maintains a database of claims made under the Seafarers Act and reporting of information in this database could provide a basis for discussions with FAHCSIA on an alternative to the notification requirements. The Seacare Authority would be interested in facilitating a reporting template applicable to employers and insurers in the Seacare scheme.

Conclusion

The Seacare Authority has reservations concerning the impact of the notification requirements in the Bill on private sector insurers and employers in the Seacare scheme. While the alternative reporting arrangements appear attractive further information on the nature of these arrangements is required before a definitive position can be determined.

David Sterrett

Chairperson

Seacare Authority

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