Submission by the Australian Council of Trade Unions (ACTU)

to the Senate Education and Employment Legislation Committee

of the Australian Parliament into the

Seafarers and Other Legislation Amendment Bill 2016

Seafarers Safety and Compensation Levies Bill 2016

Seafarers Safety and Compensation Levies Collection Bill 2016

November 2016

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Introduction

The Australian Council of Trade Unions (ACTU) is grateful for the opportunity to make a submission to the Senate Education and Employment Legislation Committee on three Bills (hereafter collectively referred to as the "Bills") recently introduced by the Turnbull Government, namely:

- *Seafarers and Other Legislation Amendment Bill 2016*
- *Seafarers Safety and Compensation Levies Bill 2016*
- *Seafarers Safety and Compensation Levies Collection Bill 2016*

The ACTU

The ACTU has for many years played a significant role in relation to occupational health and safety and workers' compensation matters on behalf of all Australian workers, whether members of a union or not. The ACTU also advocates for improvement in occupational health and safety (OHS) and workers' compensation laws and standards, and interacts with various national, state and territory departments, agencies and regulators.

The ACTU is represented on the:

- Safety, Rehabilitation and Compensation Commission;
- Safe Work Australia; and the
- Asbestos Safety and Eradication Council

The state and territory branches of the ACTU are active members of various consultative fora.

Harmonisation of Workplace Health and Safety Laws

The ACTU supports the harmonisation of workplace health and safety laws consistent with the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*[1] signed by all Australian Governments in 2008.

The ACTU fully participated in the development of the model work health and safety law adopted by Safe Work Australia in 2011.

In addition to its principle OHS jurisdiction (Comcare), the ACTU has campaigned for the Australian Government to harmonise its two other OHS jurisdictions, namely:

- ❖ Maritime industry; and

[1] *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (http://www.coag.gov.au/node/276)*

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- Offshore petroleum industry *(Offshore Petroleum and Greenhouse Gas Storage Act 2006)*.

In 2013, the ACTU advocated for the establishment of a review into the *Occupational Health and Safety (Maritime Industry) Act 1993.*

The Review into the Seacare scheme was established in 2012 by Hon. Bill Shorten MHR, the then Minister for Workplace Relations.

The Minister's media release announcing the review stated as follows:

> *"It is the Government's intention that the review will not consider any reduction in existing benefits afforded to workers covered by the Seacare scheme."*

The Report[2] of the Review into the Seacare scheme was released in March 2013.

The report of the review stated as follows:

> *Terms of reference 2(c) – legislative consistency between the OHS(MI) Act and the model WHS laws*
>
> *R.5.1 The OHS(MI) Act should be updated on the basis that:*
>
> *a) its structure and provisions should be the same as those in the model WHS Bill except where another approach is justified in the particular circumstances of the maritime industry as covered by the OHS(MI) Act (see below);*
>
> *b) the OHS(MI) Act should not adopt an approach or provision differing from the model WHS Bill if it would result in a less safe work health and safety outcome than would be achieved by using the equivalent provision of the model WHS Bill, unless that provision is impractical or inappropriate;*
>
> *c) the assessment of whether and how the model law should be modified should be undertaken through consultation with industry stakeholders, including the relevant unions* (our emphasis)

Despite the recommendation by the review, the Australian Government did not develop any of the Bills through consultation with the ACTU and maritime unions.

The ACTU regrets the failure of the Australian Government to establish a tripartite process to develop the Bills similar to the process used to develop the model work health and safety laws and submits that the passage of the Bills be delayed until such time that this consultation process has occurred.

The Bills were introduced into the Parliament on 13 October 2016. Therefore, the ACTU and maritime industry unions have only had eight weeks to analyse Bills that have been developed by the Australian Department of Employment over a period of 3 ½ years.

[2] https://docs.employment.gov.au/documents/review-seacare-scheme-report

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Amendments to the *Work Health and Safety Act 2011*

1. Code of Practice (s.195)

Section 274 of the *Work Health and Safety Act 2011* states that the Minister may only approve, vary or revoke a code of practice if that code of practice, variation or revocation was developed by a process that involved consultation between the governments of the Commonwealth and each State and Territory, and unions, and employer organisations.

The Bill seeks to apply a different consultation process for a code of practice solely applying in the maritime industry.

In relation to a code of practice applying solely in the maritime industry, the Bill stipulates that consultation occur with the Safety, Rehabilitation and Compensation Commission (SRCC). The ACTU submits that consultation should occur with both the ACTU and unions with membership in the maritime industry and that the Bill should be amended to this effect.

In our view, it is appropriate that consultation take place directly with the unions with membership in the industry given they are closer to and therefore have a better appreciation of the workings of the maritime industry, including the hazards encountered by workers in the industry.

It is also the case that the SRCC focusses almost exclusively on licencing issues as they relate to the deregulation agenda of the current government. Regretfully, little meaningful consideration is given to OHS matters.

2. Provisional Improvement Notice

The *Seafarers and Other Legislation Amendment Bill 2016* (the Bill) seeks to amend the *Work Health and Safety Act 2011*.

Section 229 of the Bill seeks to amend section 93 of the *Work Health and Safety Act 2011* which enables a Health and Safety Representative (HSR) to include directions about remedying a contravention of the Act or Regulations within a provisional improvement notice.

Section 93 of the *Work Health and Safety Act* mirrors the relevant provision of the *Model Work Health and Safety Act* prepared by members of Safe Work Australia. In 2011, State, Territory and Commonwealth Ministers approved the adoption of the model laws as proposed by Safe Work Australia.

If the amendment is enacted, a HSR will only be able to include recommendations in a provisional improvement notice, rather than directions.

The ACTU opposes this amendment on the basis that it may undermine workplace safety standards. The emphasis should remain on remedying the alleged contravention.

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If a direction contained in a PIN is onerous or unreasonable, a person to whom a PIN is issued is able to request the regulator to review the notice.

The ability for a HSR to issue a provisional improvement notice is one of the key functions of a HSR under OHS law.

A HSR has the ability to include directions in a PIN in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Victoria.

If enacted, this amendment will undermine the harmonisation of Australia's OHS laws.

Amendments to the *Safety, Rehabilitation and Compensation Act 2006*

As stated, the ACTU was not consulted about the changes sought to be made to the *Safety, Rehabilitation and Compensation Act 2006* despite the ACTU having representatives on the Safety, Rehabilitation and Compensation Commission.

It is also regretful that the Australian Government failed to consult with the Safety, Rehabilitation and Compensation Commission during the development of the Bills.

Given the amendments sought to be made to the *Safety, Rehabilitation and Compensation Act 2006* have effect beyond the maritime industry, the ACTU should have been consulted in the development of the *Seafarers and Other Legislation Amendment Bill 2016*.

Amendments to the Seafarers Safety and Rehabilitation Act 1992

The contribution test for disease is proposed to extend to 'significant contribution'[3] in line with SRC Act. The test will become much higher as 'significant degree' means 'substantially more than material'. This will result in fewer worker compensation claims approved.

Abolition of the Seafarers Safety, Rehabilitation and Compensation Authority

The Seacare scheme is currently administered by the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority).

Despite the exemplary job performed by the Seacare Authority in administering the Seacare scheme, the Bill seeks to abolish it.

The ACTU opposes the abolition of the Seacare Authority. The membership of the committee is representative of industry stakeholders and workers who have relevant subject matter expertise.

[3] Item 71, new section 5B

The Bill contemplates the establishment of an advisory body to be known as the Seacare Advisory Group (SAG). In the Bill, the establishment of the SAG committee is at the sole discretion of the Chairperson of the Safety, Rehabilitation and Compensation Commission.

If the committee is minded not to recommend against the abolition of the Seacare Authority, then in our respectful submission it should recommend that the Bill mandate the establishment of the SAG committee.

Furthermore, it is our submission that the composition of the SAG be set out in the legislation, or at the very least be a matter for the Safety, Rehabilitation and Compensation Commission as a whole.

The role of the Chairperson of the Safety, Rehabilitation and Compensation Commission should be to strive to effectively chair the meetings of the SRCC. The Bill, if enacted, will further concentrate power in the hands of one individual at the expense of other members of the SRCC and lead to an even greater politicisation of the role.

With the Seacare Authority abolished and integrated into Comcare it is likely to add regulatory limitations and unlikely to take a commercial approach to resolving claims. If a similar approach to SRC Act is applied, insurers may not resolve claims globally or on a commercial basis. They will spend thousands of dollars defending a decision to reject a benefit worth as little as $1,000.00. The ACTU is deeply concerned by the threat this poses on resolving worker compensation disputes.

Deterioration in worker compensation outcomes

The proposed changes in the bills seek to change reasonable 'disciplinary' action exclusion to psychological injuries to a broader reasonable 'administrate[4]' action. This will mean more claims will be caught by the administrative exclusion and more claims will be rejected.

Currently employers cannot 'opt in' to the worker compensation scheme. However these bills as they stand allow employers to 'opt in[5]. Employers likely to be impacted by Common Law or 'worker friendly' jurisdictions will choose to opt in, diminishing the rights of the injured worker. An employer predominantly working in QLD waters with QLD crew could 'opt in' to avoid a more beneficial workers' compensation alternative.

Submission by The Maritime Union of Australia

The ACTU adopts and endorses the submission of The Maritime Union of Australia.

[4] Item 71, new section 5A
[5] New section 25E

ADDRESS
ACTU
365 Queen Street
Melbourne VIC 3000

PHONE
1300 486 466

WEB
actu.org.au

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