



Allianz Australia Insurance Limited
ABN 15 000 122 850

12th April 2012

Ms J Morris
Committee Secretary
Standing Committee on Infrastructure
and Communications
PO Box 6021, Parliament House
CANBERRA ACT 2600

Inquiry into the Shipping Reform Bills

Thank you for your invitation to respond to the inquiry into the Shipping Reform Bills issued on 29 March 2012. In responding, we are restricting our submission to matters that have insurance coverage implications.

Allianz Australia Insurance Limited (ACN 000 122 850) is an authorised insurer under the *Insurance Act 1973*.

Allianz is a leading worker's compensation insurer in Australia, underwriting to its own account or managing on behalf of government authorities, business with premiums exceeding \$1.2 billion. Allianz is licensed to underwrite or act on behalf of government schemes in all workers compensation jurisdictions where multi-private insurers are permitted to operate.

Allianz is also the leading insurer for Workers' Compensation coverage for employers operating under the *Seafarers Rehabilitation and Compensation Act 1992* (the *Seafarers Act*). Additionally, we provide protection for specific liabilities of employers under the Navigation Act and also for employers that are obliged to provide benefits equivalent to the Seafarers Act under industrial agreements.

Allianz has made submission to the Seacare Authority in relation to the *Seacare Jurisdictional Coverage – Discussion Paper* on 30 March 2012. Attached is a copy of the submission for your reference. In that submission consideration was given to the Shipping Reform *Exposure Draft Bills* and the implications they would have on the coverage provisions under the Seafarers Act.

We have now assessed the various Bills and our observation is: there has been a material change in the Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012 from that outlined in the Exposure Draft in relation to vessels registered in the Australian International Shipping Register (the International Register) engaged in coastal trading. Under the Exposure Draft, such vessels were subject to the Seafarers Act when undertaking coastal trade whereas the Bill now excludes such vessels under the Seafarers Act.



The consequence of this change is an apparent gap in protection for crew employed on vessels registered under the International Register while engaged in coastal trading. While Section 61AM of the Shipping Registration Amendment (Australian International Shipping Register) Bill makes provision for compulsory insurance for death or long term disability, such coverage only applies to ships when engaged in international trade.

We recommend that the above mentioned Bill be amended so that S 61AM also applies to ships when engaged in coastal trade.

We note that the Navigation Act would apply to all ships registered under the International Register and there would be entitlement to medical expenses (Section 127 of the Navigation Act) and wages of seaman left on shore or injured (Section 132 of the Navigation Act). Therefore there does not appear to be a gap in this regard.

Please do not hesitate to contact the undersigned should have any queries regarding this submission.

Yours sincerely

Michael Taig
General Manager Underwritten Workers Compensation & Distribution
Allianz Australia Insurance Limited

Allianz - Employer of Choice for Women (EOWA) 2009 - 2012#
Allianz - General Insurance Company of the Year 2011 & 2009+
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Equal Opportunity for Women in the Workplace Agency citation

* Australian Banking and Finance Insurance Awards

+ Australian Insurance Industry Awards

Encl. - Submission to the Seacare Authority's *Seacare Jurisdictional Coverage* –
Discussion Paper dated 30th March 2012



Allianz Australia Insurance Limited
ABN 15 000 122 850

30th March 2012

The Chairperson
Seacare Authority
GPO Box 9905
CANBERRA ACT 2601

Seacare Jurisdictional Coverage – Discussion Paper

Thank you for your invitation to respond to the Discussion Paper issued on 15 February 2012.

Allianz Australia Insurance Limited (ACN 000 122 850) is an authorised insurer under the *Insurance Act 1973*.

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Allianz is also the leading insurer for Workers' Compensation coverage for employers operating under the *Seafarers Rehabilitation and Compensation Act 1992* (the *Seafarers Act*). Additionally, we provide protection for specific liabilities of employers under the Navigation Act and also for employers that are obliged to provide benefits equivalent to the Seafarers Act under industrial agreements.

Objectives and Guiding Principles

We support the objective to de-link the Seafarers Act from the Navigation Act so that it stands independent. We agree with the need to remove the uncertainty, ambiguity and complexity associated with the current legislation.

We also agree with the Guiding Principles and believe an additional factor be included:

Achieve consistency with other jurisdictions in Australia where there is an opportunity to do so without substantially changing the scope of the Seafarers Act.

In considering the Discussion Paper, we have endeavoured to assess the future landscape of the maritime industry in Australia, acknowledge there is likely to be a material change to the profile of the workforce, particularly an increase in the number of overseas workers.

Seafarers

A key item to be addressed when considering each of the draft coverage provisions is the crewing requirements on vessels to be covered under the scheme. In particular, the crew on a vessel may consist of Australian citizens, permanent visa holders, temporary visa holders or overseas workers.

A number of the draft coverage provisions presented have specific crewing requirements defined, for example, where operating under a General Trading Licence or a Transitional General Trading Licence; there is a requirement that all seafarers working on these vessels must be either Australian citizens, hold a permanent visa or hold a temporary visa.

On the other hand, a number of the draft coverage provisions, have no specific crewing requirements defined. These provisions include: where a declaration by the Seacare Authority is issued; where an Australian registered commercial vessel hold an 'opt in' declaration under the Navigation Act; or for coverage provided to offshore industry vessels. This could lead to a situation whereby coverage under the Seafarers Act is provided to vessels where the crew are overseas workers or where a majority of the crew are overseas workers.

Where crewing requirements have not been specified in the draft coverage provisions, we would recommend that these vessels be subject to comparable crewing requirements to those vessels operating under a General Trading Licence or a Transitional General Trading Licence, or as a minimum have a requirement that a 'majority' of the crew are either Australian citizens, hold a permanent visa or hold a temporary visa.

Managing claims for seafarers residing outside Australia

The Seacare scheme has mechanisms in place that enable an injured worker to be supported by the employer whilst incapacitated by the provision of medical and rehabilitation services to facilitate as far as possible a return to pre-accident capacity. At the same time employers operating under the Seacare scheme have obligations to rehabilitate an injured employee to their pre-accident employment, or where this is not possible undertake retraining.

The ability for an employer to effectively meet their rehabilitation obligations for an injured worker is materially diminished when the worker resides outside Australia and more particularly when residing in less developed countries.

Additionally there are significant difficulties in the effective management of such claims. There is little to no oversight over the nature and scope of medical treatment nor return to work initiatives including retraining when a return to pre-accident employment is not possible. The consequences are that such claims cost substantially more with entitlements potentially being paid until retirement age.

This applies to both overseas workers returning to their country of residence and other workers who elect to reside outside Australia (including Australian nationals).

This creates an inequitable position whereby injured workers residing in Australia are required to undertake appropriate rehabilitation in order continue to receive weekly benefits, whilst injured workers residing outside Australia may have no access to



appropriate rehabilitation or no oversight is available around the rehabilitation being provided yet they continue to receive weekly benefits.

An increase in the number of seafarers in these categories will result in a substantial increase in the cost of claims under the Seacare scheme which in turn could threaten the financial viability of the scheme.

Access to benefits

If the intention is to include overseas seafarers under certain circumstances, we would recommend that limitations to the extent of benefits payable to overseas seafarers be applied when they return to their country of residence.

We would also recommend that these limitations be applied to any injured worker who elects to reside outside Australia.

The solution is to adopt a similar approach to that generally applying in all workers compensation schemes in Australia, whereby an injured worker's entitlement to weekly benefits is discontinued when the person returns to their home country, or elects to reside outside Australia, and the worker's rehabilitation program has not been fully completed.

Coverage

We make the following comments in relation to the draft coverage provisions outlined in the Discussion Paper. Since the Discussion Paper was drafted we note the Government has introduced to Parliament five draft Bills associated with the Government's shipping reform agenda that will have an impact on the coverage provisions under the Seafarers Act and we have also included commentary on these items where not specifically addressed in the Discussion Paper.

- *Discussion Paper, Item 22, Point 1: Employment of Seafarers – all seafarers on the vessel are covered regardless of the nature of their employment contract.*

Comment

This is in line with the current coverage provisions and we support this being maintained.

- *Discussion Paper, Item 22, Point 2: Declaration by Seacare Authority – a new provision in the Seafarers Act that allows the Seacare Authority to declare that the Act applies to a vessel on request of the operator under certain circumstances.*

Comment

We note the regulations outlining the circumstances that the Seacare Authority would take into account when considering a declaration are yet to be issued. In principle, we agree this is an appropriate coverage provision subject to the crewing requirements being consistent with other circumstances where the Seafarers Act applies.



- *Discussion Paper, Item 22, Point 3: Australian registered commercial vessels (registered under the Shipping Registration Act 1981, in future to be known as the Australian General Shipping Register) which operate on international voyages or the coastal trade..*

Comment

We agree this is an appropriate coverage provision.

- *Discussion Paper, Item 22, Point 4: Australian registered commercial vessels hold an 'opt in' declaration under the proposed Navigation Bill 2012.*

Comment

There are similar 'opt in' provisions currently in place and in principal we agree this is an appropriate coverage provision. We recommend crewing arrangements be clarified. Our position on crewing arrangements have been highlighted earlier in this submission.

- *Discussion Paper, Item 22, Point 5: Foreign registered vessels that hold a Transitional General Trading Licence.*

Comment

We agree this is an appropriate coverage provision.

- *Discussion Paper, Item 22, Point 6: Offshore industry vessels – these vessels would be covered when operated by an Australian domiciled operator.*

Comment

In principal we would support this provision, however we believe there are a number of key items that need to be addressed.

- A clear and precise definition is required as to what will constitute an offshore industry vessel, for example, what is the position on supply vessels and rigs engaged in the offshore industry? A definition has been provided in the Discussion Paper whereby an offshore industry vessel is defined as vessels wholly or primarily engaged in exploiting or exploring the non-living natural resources of the seabed and subsoil of the seabed. The definition provided in the draft Coastal Trading Bill is broader as it includes vessels 'associated with or incidental to'. Under the definition in the draft Coastal Trading Bill, we would interpret this to include supply vessels. We note that at present a large number of the seafarers (depending on which Union they are represented by) that are working on supply vessels supporting the offshore industry are currently working under industrial agreements that require them to be covered for benefits equivalent to the Seafarers Act, regardless of whether the Seafarers Act actually applies. Our view is that the broader definition noted in the draft Coastal Trading Bill should be adopted.
- The draft coverage provisions do not make any mention of crewing requirements. We recommend crewing arrangements be clarified. Our



position on crewing arrangements have been highlighted earlier in this submission.

- The proposed definition of an Australian domiciled operator will capture foreign companies who have a representative office in Australia. This could result in situations where an Australian company is operating vessels that a foreign parent company has assigned to different places in and out of Australia.

We do not believe such vessels should be covered under the Seafarers Act where they only temporarily operate in Australia, or may never operate in Australia.

An exception to this would be where the vessel temporarily operates in Australia and it is crewed in accordance with a vessel operating under a General Trading Licence or a Transitional General Trading Licence.

If the vessel is: 1) 'based' in Australia, 2) is crewed in accordance with a vessel operating under a General Trading Licence or a Transitional General Trading Licence and 3) working inside and outside Australia, then its inclusion would be appropriate.

- *Shipping Registration Amendment (Australian International Shipping Register) Bill 2012: Vessels registered under the Australian International Shipping Register and which are undertaking international voyages would not be covered by the Seafarers Act.*

Comment

The draft Australian International Shipping Bill states the intention is that these voyages **would not** be covered by the Seafarers Act. We are in support of this recommendation.

- *Shipping Registration Amendment (Australian International Shipping Register) Bill 2012: Vessels registered under the Australian International Shipping Register and which are engaged in coastal trade or intra-state trade would be covered by the Seafarers Act.*

Comment

The draft Australian International Shipping Bill states the intention is that these voyages **would** be covered by the Seafarers Act.

Again we recommend crewing arrangements be clarified. Under the draft Bill vessels registered under the Australian International Shipping Register (AISR) are only required to have two senior crew who must be Australian nationals or residents. The balance of the crew can be Australian nationals/residents or foreign crew. This could create a position where a vessel registered on the AISR is engaged in coastal trade or intra-state trade with largely a foreign crew.

The items requiring consideration and clarity are:

- What would be the crewing requirements when these vessels are engaged in coastal trade or intra-state trade, would the same crewing arrangements apply as those vessels subject to a General Trading Licence or Transitional General Trading Licence?
- If the intention is that there would be no difference to the crewing requirements between international voyages and Australian coastal trade or intra-state trade; would there be an expectation that the foreign crew be covered under the Seafarers Act or would the foreign crew continue to be covered by any international workers compensation arrangements in place that apply when undertaking international voyages?
- *Coastal Trading (Consequential Amendments and Transitional Provisions) Bill 2012: Foreign vessels that hold a Temporary Trading Licence would not be covered by the Seafarers Act.*

Comment

The draft Coastal Trading Bill states the intention is that these vessels **would not** be covered by the Seafarers Act. We are in support of this suggestion.

Excluded Vessels and Operations

The draft coverage provisions outlined in the Discussion Paper outline a number of vessels and types of operations where the Seafarers Act would **not** apply. We are in agreement with these suggested provisions.

Trainees

In addition, we believe the coverage provisions in respect to trainees need to be clearly defined. Whilst the Seafarers Act currently has clear definitions around who a trainee is and when an injury to a trainee is considered to have arisen out of, or in the course of, his or her employment, the current application provisions under section 19 of the Act only make reference to employees 'on' a prescribed ship. As a trainee may be undergoing a training course prior to becoming a seafarer or may be a seafarer undergoing a training course but is not currently employed or engaged on a vessel, we would recommend a clause in line with the following be included to the coverage provisions:

This Act applies to the employment of industry trainees who:

- a) *although ordinarily employed or engaged as a seafarer, is not so employed or engaged but is undergoing an approved industry training course.*
- b) *is undergoing an approved industry training course before becoming a seafarer.*

This Act applies to the employment of company trainees who:

- c) *although ordinarily employed or engaged as a seafarer, is not so employed or engaged but is undergoing a training course as required by his or her employer,*



d) *is undergoing a training course as required by his or her employer before becoming a seafarer.*

Please do not hesitate to contact the undersigned should have any queries regarding this submission.

Yours sincerely

Michael ~~Talg~~
General Manager Underwritten Workers Compensation & Distribution
Allianz Australia Insurance Limited

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