



Australian Government

Department of Employment

Seacare Reforms

Regulation Impact Statement

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List of Abbreviations and Defined Terms

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
Advisory Group	Seafarers Advisory Group
AMSA	Australian Maritime Safety Authority
The Department	Department of Employment
EY Review	Ernst & Young Actuarial Business Consultants Pty Ltd, Evaluation of the Seacare Scheme, May 2005
FPSO	Floating Production Storage and Offloading vessel
HSR	Health and Safety Representative
Levy Act	<i>Seafarers Rehabilitation and Compensation Levy Act 1992 (Cth)</i>
Levy Collection Act	<i>Seafarers Rehabilitation and Compensation Levy Collection Act 1992 (Cth)</i>
Model WHS Laws	<i>Model work health and safety laws developed by Safe Work Australia</i>
Navigation Act	<i>Navigation Act 1912</i>
NDIS	National Disability Insurance Scheme
NIIS	National Injury Insurance Scheme
NSW	New South Wales
NT	Northern Territory
OHS Act	<i>Occupational Health and Safety Act 1991 (Cth)</i>
OHS(MI) Act	<i>Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)</i>
OHS(MI)(NS) Regulations	<i>Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003 (Cth)</i>
OHS(MI) Regulations	<i>Occupational Health and Safety (Maritime Industry) Regulations 1995 (Cth)</i>
PCBU	Person Conducting a Business or Undertaking
PIN	Provisional Improvement Notice

PwC	PricewaterhouseCoopers
QLD	Queensland
RIS	Regulation Impact Statement
SA	South Australia
SWA	Safe Work Australia
Seacare Authority	Seafarers Safety, Rehabilitation and Compensation Authority
Seacare Code	Seacare Authority Code of Practice
Seafarers Act	<i>Seafarers Rehabilitation and Compensation Act 1992 (Cth)</i>
Social Security Act	<i>Social Security Act 1991 (Cth)</i>
SRCC Act	<i>Safety, Rehabilitation and Compensation Act 1988 (Cth)</i>
SRCC	Safety, Rehabilitation and Compensation Commission
Stewart-Crompton Review	Review of the Seacare Scheme, Mr Robin Stewart-Crompton, March 2013
TAS	Tasmania
The Fund	Safety Net Fund
WA	Western Australia
WHS Act	<i>Work Health and Safety Act 2011 (Cth)</i>
WHS Regulations	<i>Work Health and Safety Regulations 2011 (Cth)</i>

Executive Summary

The Seacare scheme is a workers' compensation and work health and safety scheme covering a small defined segment of the Australian maritime industry. The Seacare scheme is underpinned by the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) (Seafarers Act) and the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth) (OHS(MI) Act).

Two independent reviews of the Seacare scheme (the "Ernst & Young Actuarial Business Consultants Pty Ltd Evaluation of the Seacare Scheme" (EY Review), conducted in 2005, and the "Review of the Seacare Scheme by Mr Robin Stewart-Crompton" (Stewart-Crompton Review), conducted in 2012-13) have highlighted that it needs widespread reform. Its work health and safety arrangements are outdated and require alignment with contemporary work health and safety law and practice. In addition, the Seacare scheme is not sufficiently funded to be adequately administered and regulated; coverage of the Seacare scheme is unclear; and its governance arrangements are regarded as inefficient.

Since the commencement of the Seacare scheme in 1993, there have been important changes in the profile of the Australian maritime industry, including to its employment arrangements, workplaces and working conditions, health care and rehabilitation and technology. The Seacare scheme has not kept pace with these changes and has come under significant pressure as a result.

The changes to the profile of the maritime industry have created issues with the coverage of the Seacare scheme for governments, regulators, employers and employees. Scheme participants have significant difficulty determining with certainty whether a ship and its employees are covered by the Seacare scheme. This lack of certainty has resulted in a large number of disputed claims.

The Seacare scheme's coverage issues have been exacerbated by the Full Federal Court decision in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the Aucote decision). That decision had the effect of expanding the coverage of the Seacare scheme from around 340 ships to potentially over 10,000 ships, which would have significant cost implications for the Government and maritime industry employers. The Seacare Authority and the Government have taken actions to confine the coverage of the Seacare scheme following the decision.

The OHS(MI) Act, which is the Seacare scheme work health and safety legislation, is considerably out-of-date and is not aligned with the model work health and safety laws (model WHS laws) that operate in most of Australia. Because of this, the OHS(MI) Act is not proving effective in securing the health and safety of seafarers.

The governance arrangements applying to the Seacare scheme require reform to address inefficiencies and provide more effective oversight of the Seacare scheme. The Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) consists of seven part-time members who meet on a quarterly basis. It does not have the staff or financial resources to effectively oversee the Seacare scheme. The Australian Maritime Safety Authority (AMSA), which is the WHS inspectorate for the Seacare scheme under the OHS(MI) Act, does not receive any appropriation to undertake this role. The lack of resourcing for the Seacare Authority (and Comcare to assist the Authority) and AMSA limits their ability to effectively perform their regulatory functions for the Seacare scheme.

During the development of proposed reforms to the Seacare scheme, three options were considered:

1. maintain the Seacare scheme in its current form (status quo),
2. abolish the Seacare scheme and transfer WHS and workers' compensation responsibility to the state and territories, and
3. reform of the Seacare scheme.

Under Option 1, the Seafarers Act and OHS(MI) Act would remain in place. The Seacare Authority would continue with its current role and functions, supported by Comcare. AMSA would continue as the WHS inspectorate. The existing inadequate resourcing arrangements for the Seacare Authority and AMSA would continue. The administrative action and legislative instruments made following the Federal Court's Aucote decision will expire if not extended, which would significantly expand the coverage of the Seacare scheme with substantial cost implications for the Government.

Option 1 is not preferred as there is an urgent need to provide certainty to stakeholders over the coverage of the Seacare scheme following the Federal Court's Aucote decision. There is also a clear need to update the Seacare scheme's work health and safety regulation.

Under Option 2, the Seafarers Act, OHS(MI) Act and other Acts relating to the Seacare scheme would be repealed to abolish the Seacare scheme. Responsibility for seafarers' workers' compensation and work health and safety would be transferred to state and territory governments.

Option 2 is not preferred. It is not likely to provide any significant actual regulatory benefits to employers because they will be required to comply with state and territory workers' compensation and work health and safety legislation. This option would take time to implement and due to legacy workers' compensation claims the Seafarers Act would still need to be in operation for a number of years. Union stakeholders are strongly opposed to abolishing the Seacare scheme. This option is not preferred at this time given the long time it will take to achieve and stakeholder opposition.

Under Option 3, the Seacare scheme would be reformed through the introduction of amendment legislation. Reform of the Seacare scheme would broadly involve clarifying the coverage of the Seacare scheme while retaining the same scope of coverage, extending the operation of the WHS Act to the Seacare scheme, making overdue updates to the Seafarers Act, transferring the Seacare Authority's functions to the Safety, Rehabilitation and Compensation Commission (SRCC) and Comcare and introducing a cost-recovery levy.

Option 3 is the preferred option. It addresses the most urgent problems with the current Seacare scheme. The reform option imposes a minimal regulatory cost on Seacare scheme employers, which is largely a one-off cost of transitioning to the WHS Act, while providing overall benefits from improved work health and safety outcomes.

Option 3 is expected to result in costs to Seacare scheme employers arising from the need to train officers and employees to meet their new WHS duties. It is also expected to result in costs for Seacare scheme employees from the need to obtain high risk work licences to perform certain classes of high risk work. However, clarifying the coverage of the Seacare scheme is expected to provide a benefit by reducing administration costs for Seacare scheme employers.

Overall, while uncertain, Option 3 is estimated to have an overall regulatory cost of **\$0.095 million per year**, averaged over ten years, with regulatory costs of **\$0.081 million per year** for employers

and **\$0.014 million per year** for employees. There are no regulatory costs or benefits for community organisations. This regulatory cost is offset by savings generated through changes to workplace gender reporting.

While Option 3 generates some regulatory cost, the proposed changes to work health and safety legislation are expected to provide non-regulatory benefits by reducing the number, and overall cost, of workplace injuries. While uncertain, the overall benefits from improved safety outcomes are estimated to be between \$1.050 million and \$3.750 million per year across the Seacare scheme, with the main beneficiary being workers who would avoid costs arising from workplace injuries.

The Department has engaged in significant consultation with maritime industry employers and unions, insurers and other stakeholders over proposed reform to the Seacare scheme. This includes consultation undertaken as part of and immediately following the Stewart-Crompton Review, consultation with stakeholders to test possible reforms for the Seacare scheme and a preview of the draft reform legislation. The Seacare reforms broadly reflect the findings of the Stewart-Crompton Review and the specific reform proposal incorporates feedback provided during consultations on the reform option.

The Seacare reform proposal will be implemented through the passage of legislation through the Parliament. Comcare will work closely with the Seacare Authority and SRCC to ensure a smooth transition of the Authority's functions to the SRCC. AMSA will work with stakeholders to provide information and advice on work health and safety changes.

1. Problem Statement

This section provides information on the Seacare scheme legislative framework and issues that impact on employers and employees covered by the Seacare scheme. It outlines significant issues with the operation of the current Seacare scheme, highlighting the urgent need to reform certain aspects of the Seacare scheme.

1.1. What is the Seacare scheme?

The Seacare scheme is a national work health and safety and workers' compensation scheme for small defined segment of the Australian maritime sector. The Seacare scheme is underpinned by a legislative framework comprising the Seafarers Act and the OHS(MI) Act.

The Seafarers Act establishes a privately underwritten workers' compensation scheme for a defined segment of the maritime sector. Employers covered by the Seafarers Act are required to maintain an insurance policy with an approved insurer to cover workers' compensation claims made under the Act. The Seafarers Act also establishes the Seacare Authority to oversee the operation of the Act.

The OHS(MI) Act provides a work health and safety legislative framework for largely the same part of the maritime industry as the Seafarers Act. The OHS(MI) Act confers broad oversight functions on the Seacare Authority and prescribes AMSA as the work health and safety inspectorate for the Seacare scheme. The OHS(MI) Act enables the *Occupational Health and Safety (Maritime Industry) Regulations 1995* (OHS(MI) Regulations), the *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* (OHS(MI)(NS) Regulations) and two Codes of Practice.

The Seacare scheme is supported by the Seafarers Safety Net Fund (the Fund) which operates as a safety net 'employer' to provide workers' compensation payments to employees where there is no employer against whom a claim can be made (for example, because an employer becomes bankrupt or insolvent or is wound up or ceases to exist). The Fund is maintained by a levy on employers, supported by the *Seafarers Rehabilitation and Compensation Levy Act 1992* (the Levy Act) and the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* (the Levy Collection Act).

Two independent reviews of the Seacare scheme (the EY Review and the Stewart-Crompton Review) have highlighted that it needs widespread reform. The reviews found the Seacare scheme's workers' compensation and work health and safety arrangements are outdated and require alignment with contemporary law and practice. The reviews also found that the Seacare scheme is not sufficiently funded to be adequately administered and regulated, coverage of the Seacare scheme is unclear and its governance arrangements are inefficient.

1.2. Coverage of the Seacare scheme is unclear

The Seacare scheme is confined in scope. It has generally been understood to cover employers and seafarers on vessels which are engaged in interstate, international or intra-territorial trade or commerce.

The Seacare Authority's 2014-15 Annual Report noted there were 6,863 seafarers and 33 employers covered by the Seacare scheme. There were 336 vessels covered, consisting of 207 vessels from the offshore sector, 88 vessels from the blue-water sector, 30 vessels from the dredging sector, and 11 vessels from other sectors (passenger or tourism for example).

There are longstanding issues regarding the coverage of the Seacare scheme that have created problems for governments, regulators, employers and seafarers. Both the Seafarers Act and the OHS(MI) Act define coverage with reference to the repealed *Navigation Act 1912* (Navigation Act) and the engagement of vessels in certain types of trade or commerce. Due to the changing profile of the Australian maritime industry since the commencement of the Seafarers Act and OHS(MI) Act and the unclear nature of some terms used in those Acts, assessing whether a vessel is covered by the Seacare scheme can be difficult. It is currently the case that vessels, and the employees working on those vessels, can be covered by the Seacare scheme for some voyages but not for others, depending on the specific nature of each voyage.

The lack of clarity over coverage has significant administrative impacts for maritime industry employers. The Seafarers Act requires employers to hold a policy of workers' compensation insurance. Employers not covered by the Seafarers Act are covered by state and territory workers' compensation scheme. A large number of factors need to be taken into account when determining whether a vessel is covered by the Seafarers Act including the flag and ownership of a vessel, the nationalities of seafarers on-board (in particular, if at least half of the seafarers are Australian), the nature of trade and commerce of each voyage and whether the vessel falls within specified categories in the Seafarers Act.

This causes significant administrative burden for maritime industry employers. What makes it particularly difficult for employers is the fact that the current coverage test is determined on a voyage by voyage basis. This means a vessel can be covered by the Seacare scheme for one voyage and not covered for its next voyage. For these vessels, employers may also be required to purchase workers' compensation insurance under the relevant state and territory workers' compensation scheme.

There are significant implications for employers who fail to obtain the correct workers' compensation coverage. If an employer ensures coverage for a vessel under a state or territory workers' compensation scheme only and it is later found after an employee is injured, that the vessel was covered by the Seacare scheme, the employer would be required to pay compensation to the employee, in addition to the cost of the insurance policy that did not cover the liability.

While the lack of clarity over coverage creates administrative burden and other potential costs for employers, these are not understood to be significant enough to affect overall employment or business activity in the maritime industry.

The lack of clarity over coverage also has significant impacts for maritime industry employees. When an injured employee submits a claim for workers' compensation, an employer (or their insurer) must determine if the injury occurred while the vessel on which the employee worked was covered by the Seacare scheme or not.

While it is difficult to make definitive comparisons of benefits across different workers' compensation jurisdictions, the Seacare scheme is generally viewed as being more generous compared to state and territory workers' compensation schemes. The doubt over coverage creates incentives for employees to make claims under the Seafarers Act, rather than under state or territory workers' compensation schemes. Conversely, it creates incentives for employers (or their insurers) to reject claims under the Seafarers Act on the basis that the employee is covered under state schemes. Following rejection of a claim, an employee may seek a reconsideration of a decision,

file an application to the Administrative Appeals Tribunal (AAT) and eventually take the matter to court.

The lack of clarity over coverage and different incentives of employee and employers manifests itself through a large number of disputed claims in the Seacare scheme. Claims that are disputed through the AAT and the courts can be costly and time consuming for both Seacare employers and employees. As **Table 1** shows, the claim disputation rate, being the percentage of claims that result in an application to the AAT being filed, is five times higher for the Seacare scheme than for other workers' compensation schemes across Australia.

Table 1: Seacare scheme claim disputation rate

Performance indicator	Seacare scheme 2012-13 performance	Seacare scheme 2013-14 performance	Australia 2013-14 performance
Claim disputation rate (number of AAT applications as a % of claims lodged)	26.7%	28.4%	5.4%

Source: Seacare Annual Report 2013-14, Comparative Performance Monitoring Report 17th Edition, Safe Work Australia

The lack of certainty over the coverage of the Seacare scheme has been exacerbated by a decision handed down by the Full Court of the Federal Court in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 in December 2014. The Full Court held that the Seafarers Act covered seafarers employed by a trading, financial or foreign corporation on a 'prescribed ship', including vessels engaged in intrastate trade. This interpretation meant that potentially over 10,000 Australian registered vessels could be covered by the Seacare scheme.

The *Seafarers Rehabilitation and Compensation and Other Legislation Amendment Act 2015* received Royal Assent on 26 May 2015. It restored the coverage of the Seacare scheme as it was understood to be prior to the Aucote decision, but only up to the date the Act received Royal Assent. Administrative exemptions have been issued by the Seacare Authority and the Minister for Employment has made declarations to confine the coverage of the Seacare scheme to what it was understood to be prior to the Aucote decision from the date of Royal Assent. However, these are time limited, with the Seacare Authority's latest exemptions due to expire in March and April 2017 and the Minister's declarations sunseting in June 2017.

Workers' compensation insurance for the Seacare scheme is expensive compared to state and territory workers' compensation schemes (see Section 1.5 for further discussion of this). If the Seacare scheme coverage operated consistent with the Aucote decision, maritime industry employers currently covered by state or territory workers' compensation schemes would be required to obtain workers' compensation insurance under the more expensive Seacare scheme.

1.3. Work health and safety arrangements are outdated

The OHS(MI) Act was based on the *Occupational Health and Safety Act 1991 (Cth)* (OHS Act) and was broadly similar to occupational health and safety laws that applied across all states and territories at that time.

In 2012, the OHS Act was replaced by the *Work Health and Safety Act 2011* (WHS Act). The WHS Act reflects the Commonwealth’s implementation of the model WHS laws, developed by Safe Work Australia (SWA) and adopted in all Australian jurisdictions except Victoria and Western Australia.

The OHS(MI) Act has not been substantially amended since its enactment and as a result is not consistent with the WHS Act or model WHS laws upon which the WHS Act is based. The OHS(MI) Act is now considerably out-of-date, contributing to the poor safety performance of the Seacare scheme.

1.3.1. Seacare scheme serious injury claims are higher than for other industries

Table 2, below, shows information on the incidence of serious injury claims in the Seacare scheme compared to the Australian average. In 2012-13, the last full year for which data is available, the incidence rate of serious injury claims for the Seacare scheme (19.4 claims per 1000 employees) was significantly higher than the Australian average (11.0 claims per 1000 employees).

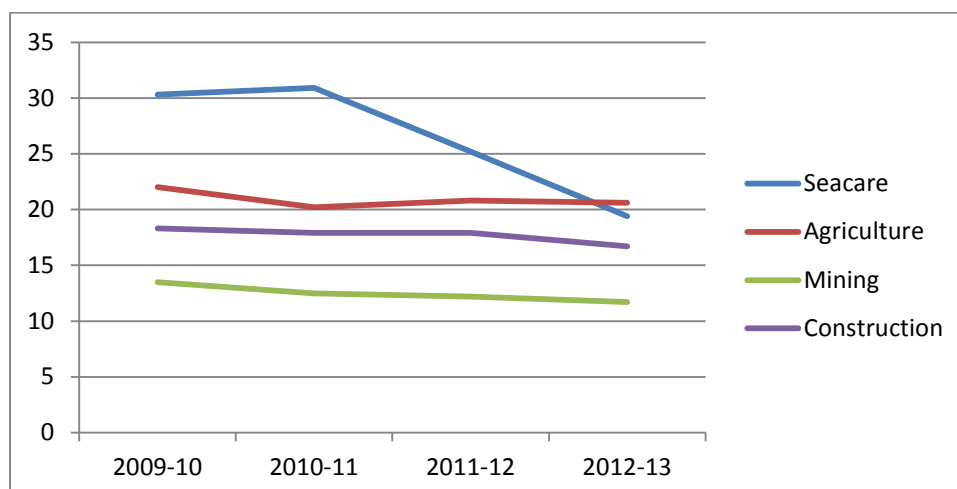
Table 2: Comparison of the Seacare Scheme and Australia key performance indicators

Performance indicator	2009-10	2010-11	2011-12	2012-13
Seacare scheme				
Serious personal injuries (per 1,000 workers)	30.3	30.9	25.2	19.4
Australia				
Serious personal injuries (per 1,000 workers)	12.4	12.2	12.1	11.0

Source: *Comparative Performance Monitoring Report 17th Edition, Safe Work Australia*

Graph 1 shows that the incidence rate of serious injury claims for the Seacare scheme is also generally higher than that of other high risk industries such as construction, mining and agriculture. While the serious injury incidence rate for the Seacare scheme trended downwards from 2010-11 to 2012-13, the serious injury incidence rate for the Seacare scheme can be quite volatile due to its relatively small size.

Graph 1: Comparison of serious injury claims per 1000 employees between the Seacare scheme and other industries

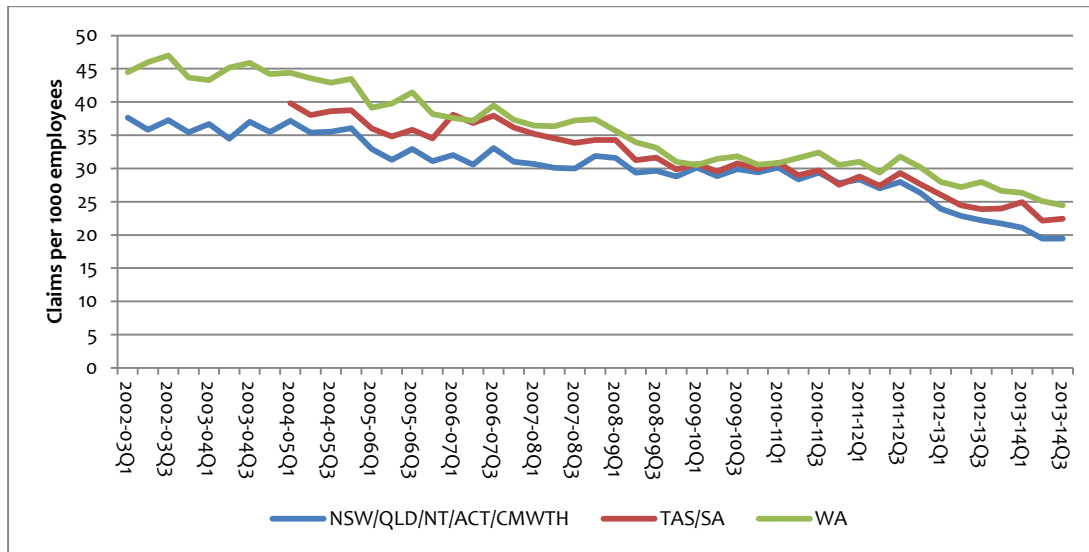


Source: *Safe Work Australia 17th Comparative Performance Monitoring Report, Seacare Annual Reports*

1.3.2. Seacare scheme serious injury claims are higher than for other jurisdictions

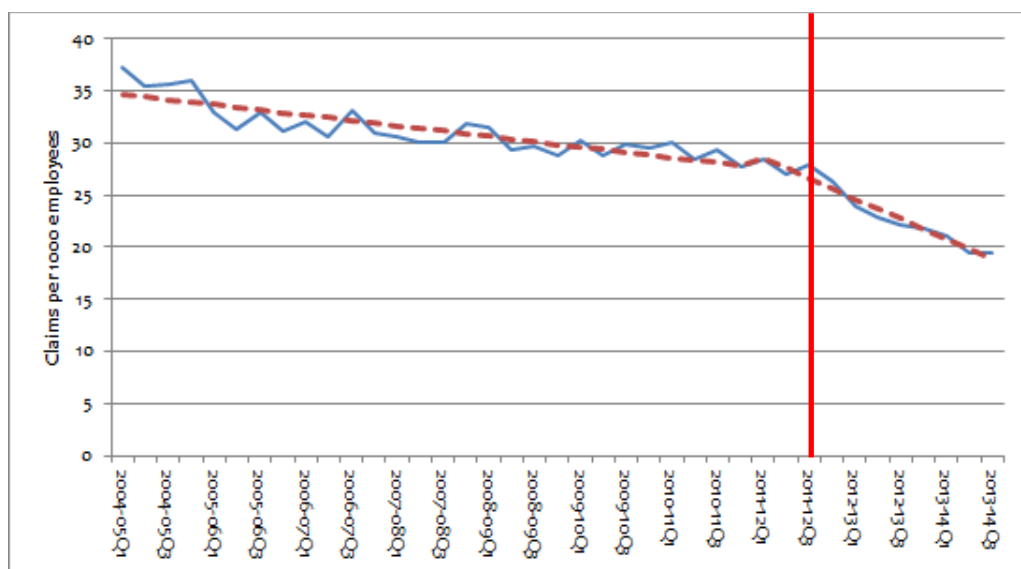
Graph 2, below, shows the incidence rate of all accepted workers' compensation claims (claims per 1,000 employees) by jurisdiction. It shows that while there has been a reduction in injury rates across all jurisdictions (including the Seacare scheme), there has generally been a greater reduction in serious injury rates in jurisdictions that have adopted the model WHS laws compared to Western Australia, which has not adopted the model WHS laws. Victoria (which has also not adopted the model WHS laws) was excluded from the analysis.

Graph 2: Comparison of serious injury claims per 1000 employees between the Seacare scheme and other jurisdictions



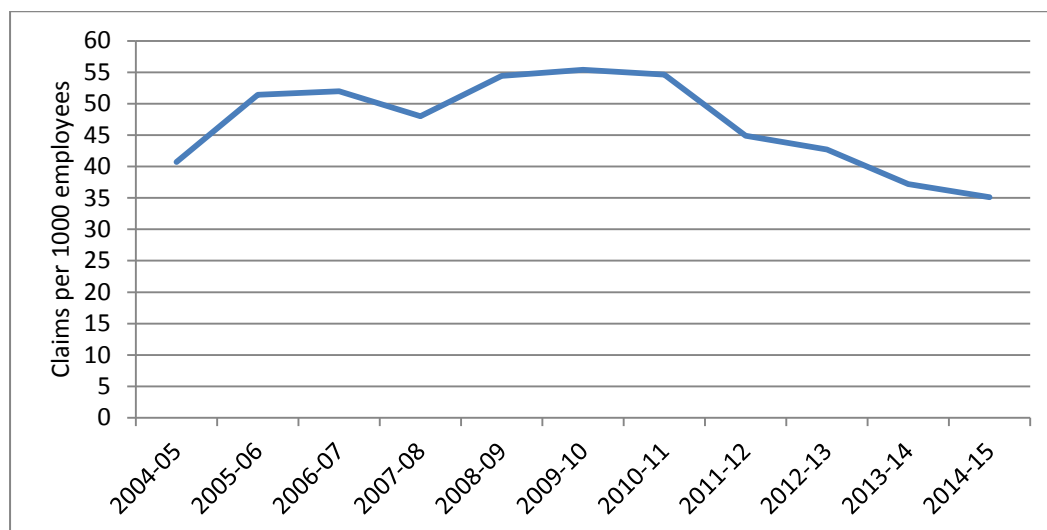
The analysis in **Graph 3** shows that there was a statistically significant change in the trend decrease of the injury incidence rate in jurisdictions that enacted the model WHS laws following enactment on 1 January 2012. Injury incidence rates have trended downward more quickly since the introduction of the model WHS laws.

Graph 3: Analysis of injury rates for model WHS law jurisdictions prior to and following implementation of model WHS laws



For comparison, **Graph 4**, below, shows the injury incidence rate for the Seacare scheme, which is not modelled in the charts above, over a similar period of time. The Seacare scheme showed a higher injury incidence rate compared to other jurisdictions. While Seacare injury incidence rates have decreased in recent years, they are well above those in jurisdictions that have adopted the model WHS laws.

Graph 4: Analysis of injury rates for the Seacare scheme



Note: The Seacare injury incidence rate can be highly volatile due to the small size of the Seacare scheme.

1.5. Workers' compensation arrangements are outdated

Since the commencement of the Seafarers Act, the Australian maritime industry, workplace arrangements, health care and rehabilitation, technology, and community expectations have changed significantly. The Seafarers Act has not kept pace with these developments. The Seafarers Act has also not kept pace with changes to other workers' compensation legislation across Australia, including the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). The retirement age in the Seafarers Act, at which point compensation benefits are no longer payable, has not been updated to reflect the increase in age of eligibility for the age pension in the *Social Security Act 1991* (Social Security Act).

Both the EY Review and the Stewart-Crompton Review recommended greater alignment between the Seafarers Act and the SRC Act, consistent with the original intent when the Seafarers Act commenced. The Stewart-Crompton Review noted that there is an imperative to ensure the Seacare scheme is up-to-date and benefits from new initiatives in national workers' compensation.

The Stewart-Crompton Review found the costs of insuring under the Seacare scheme are high compared to other workers' compensation Seacare schemes. It claimed some of the reasons for this are the relatively high injury incidence in the Seacare scheme and comparative difficulty in ensuring effective return to work for seafarers.

There are significant barriers preventing effective return to work for seafarers under the Seacare scheme, in particular the limited opportunities for graduated return to work or alternative duties. Incentives for return to work in the Seacare scheme are limited, with weekly benefits for total incapacity paid at 100 per cent for the first 45 weeks of incapacity and 75 per cent thereafter (capped at 150 per cent of the average weekly ordinary time earnings).

Table 3, below, shows the return to work performance and workers' compensation insurance premium rates of the Seacare scheme compared to the average of other Australian workers' compensation schemes.

Table 3: Seacare scheme workers' compensation performance

Performance indicator	Seacare scheme performance (2012-13)	Seacare scheme performance (2013-14)	Australia performance (2013-14)
Injury management and rehabilitation			
Durable return to work rate (% of injured workers who have returned to work and still at work 8-9 months after injury)	59%	64%	77%
Scheme sustainability			
Premium rates (average five day deductible premium equivalent rate)	2.93%	2.88%	1.48%

Source: Seacare Annual Report 2013-14; Comparative Performance Monitoring Report 17th Edition, Safe Work Australia

The small size and industry-specific nature of the Seacare scheme are also likely factors contributing to high premiums.

The Seafarers Act provides for compensation payments to cease when an injured employee reaches 65 years of age (or after 12 months if the employee was injured after reaching 64 years of age). Sixty-five was the standard retirement age and the age of eligibility for the age pension for males under the Social Security Act when the Seafarers Act was enacted in 1992.

The Social Security Act has recently been amended to increase the age of eligibility for the age pension. If no amendments are made to the Seafarers Act, there will be a gap between an employee's workers' compensation entitlements ceasing and their eligibility for the age pension commencing.

Commonwealth, state and territory governments have agreed to introduce a National Injury Insurance Scheme (NIIS) as part of the National Disability Insurance Scheme (NDIS). The NIIS will provide minimum benchmarks for lifetime care and support for people who have sustained a catastrophic injury in the workplace. Without amendment to the Seafarers Act, the Seacare workers' compensation scheme could be inconsistent with the minimum benchmarks of the NIIS once they are agreed.

1.6. Seacare scheme governance is inefficient

The Seacare Authority is established by the Seafarers Act. It has broad responsibilities to oversee the operation of the Seafarers Act and the OHS(MI) Act. The OHS(MI) Act specifies AMSA as the work health and safety inspectorate for the Seacare scheme.

The Seacare Authority is a non-corporate Commonwealth entity, but does not have any staff. The Authority consists of seven part-time members, including an independent Chairperson and Deputy Chairperson, the Chief Executive Officer of AMSA, two members representing employers and two members representing employees. Authority members meet on a quarterly basis. Comcare assists the Authority with the performance its functions under an arrangement contained in the SRC Act.

Many functions of the Seacare Authority for the Seacare scheme are the same as or similar to functions of the SRCC or Comcare for the Comcare scheme. It is inefficient to retain separate entities to monitor these schemes. The Seacare Authority also does not have the capacity to effectively monitor the work health and safety and return to work performance of Seacare scheme participants or administer its workers' compensation arrangements. In contrast, the SRCC has a strong track record at regulating self-insurers under the SRC Act.

1.7. Seacare scheme administration and regulation is not adequately funded

The Seacare Authority does not receive any appropriation from the Government to perform its functions for the Seacare scheme. Comcare receives an annual appropriation of around \$400,000 to provide the Seacare Authority with secretariat and administrative support to perform its functions. However, this appropriation does not cover Comcare's full costs of providing assistance to the Seacare Authority.

Likewise, AMSA does not receive any appropriation to undertake its OHS(MI) Act function as the work health and safety inspectorate for the Seacare scheme.

There is no legislative power under the Seafarers Act or OHS(MI) Act for the Seacare Authority or AMSA to collect levies to fund the performance of their regulatory functions for the Seacare scheme. AMSA currently cross-subsidises these functions through levies collected for other purposes from ships not necessarily covered by the Seacare scheme.

It is estimated that the combined unfunded costs to Comcare and AMSA in managing the Seacare scheme under the current arrangements are around **\$1.6 million**. This lack of resources for the Seacare Authority (and Comcare to assist the Authority) and AMSA limits their ability to ensure the effective operation of Seacare workers' compensation and work health and safety arrangements and enforce work health and safety laws.

Both the EY Review and Stewart-Crompton Review noted that the limited resources of the Seacare Authority and AMSA are likely to limit their ability to carry out their functions under the Seafarers Act and OHS(MI) Act. Both reviews made recommendations to increase funding for the Seacare Authority and AMSA.

2. Objectives of Government Action

The Government's objectives for reform of the Seacare scheme are to:

- clarify the coverage of the Seacare scheme by having clear coverage rules that operate consistently to minimise jurisdictional uncertainty and enable maritime industry employers and employees to easily determine if they are covered by the Seacare scheme,
- provide modern and effective work health and safety laws for maritime industry employers and workers that adequately protect workers against risks to their health and safety at work,
- make long overdue and necessary updates to the Seacare workers' compensation arrangements,
- provide efficient and effective governance arrangements for the Seacare scheme, and

- ensure that bodies responsible for Seacare scheme administration and regulation are adequately resourced to effectively monitor workers' compensation and work health and safety arrangements and enforce compliance with work health and safety laws.

3. Policy options

There are three broad options considered in this RIS.

1. Maintain the Seacare scheme in its current form (status quo).
2. Abolish the Seacare scheme and transfer responsibility for workers' compensation and work health and safety coverage of Seacare scheme participants to state and territory governments.
3. Reform the Seacare scheme by making amendments to workers' compensation, work health and safety, governance and cost recovery arrangements.

These options are outlined in more detail the following sections.

3.1. Option 1 – Status quo

This option involves no change to the current arrangements.

The Seafarers Act and OHS(MI) Act would not be amended. The Seacare scheme workers' compensation and work health and safety arrangements would continue with significant differences compared to other Commonwealth and state and territory workers' compensation and work health and safety schemes.

The coverage of the Seacare scheme would continue to be confined by the making of legislative instruments by the Minister for Employment and exemptions issued by the Seacare Authority, or would significantly expand if these were not continued.

The Seacare Authority would continue to oversee the Seacare scheme, assisted with the performance of its functions by Comcare, while AMSA would continue to be the work health and safety inspectorate. Both the Seacare Authority and AMSA would continue without any additional funding for the performance of their regulatory functions.

3.2. Option 2 – Abolishing the Seacare scheme

This option involves repealing the Seafarers Act, OHS(MI) Act, Levy Act and Levy Collection Act together to abolish the Seacare scheme. Without the Seafarers Act or OHS(MI) Act, responsibility for workers' compensation and work health and safety coverage of Seacare scheme participants would transfer to state and territory governments.

3.3. Option 3 – Reform of the Seacare scheme

This option would involve introducing a number of Bills into Parliament to reform the Seacare scheme.

The Seafarers Act would be amended to:

- clarify the scope of coverage of the Seacare scheme and provide clear coverage rules that operate consistently to minimise jurisdictional uncertainty,
- align the retirement age, at which workers' compensation benefits cease being payable, with the age of eligibility for the age pension in the Social Security Act,
- accommodate expected minimum benchmarks of the NIIS,

- ensure continued compliance with the International Labour Organization Maritime Labour Convention, and
- incorporate a number of necessary amendments previously made to the SRC Act that were not reflected through corresponding amendments to similar provisions in the Seafarers Act.

The OHS(MI) Act would be repealed and the WHS Act would be extended to the Seacare scheme.

The Seacare Authority's statutory functions would be transferred to the SRCC and Comcare to provide more efficient and effective governance of the Seacare scheme. AMSA would remain the work health and safety inspectorate.

Finally, a mechanism to implement a cost recovery levy and fees would be introduced. This would enable the Government to recover the costs of the SRCC, Comcare and AMSA undertaking their regulatory functions for the Seacare scheme.

These reform proposals are outlined in more detail below.

3.3.1. Coverage

To address the Seacare scheme's longstanding coverage issues, a new coverage test is proposed. The new coverage test would retain substantially the same scope of coverage – as it was understood to be prior to the Aucote decision – but provide greater certainty to maritime industry representatives over when a vessel and its employees are, or are not, covered by the Seacare scheme. The new test would also reduce jurisdictional uncertainty by ensuring that vessels are continually covered, or not covered, by the Seacare scheme rather than moving in and out of the Seacare scheme depending on the particular voyage being undertaken.

The Seacare scheme would cover all Australian registered vessels and all foreign vessels with a majority Australian crew, except for those vessels which are wholly or predominantly engaged in voyages and other tasks within the coastal waters of a single state or territory.

There would be exclusions for recreational vessels, inland waterways vessels, fishing vessels, tourism vessels, floating production storage and offloading vessels (FPSOs) (from workers' compensation coverage only) and government vessels (so long as they are crewed by Government employees). The new test would also treat vessels operating in the Northern Territory in the same way as vessels operating in any state. Currently, all 'prescribed ships' operating within a territory are covered by the Seacare scheme, unless they have an exemption from the Seacare Authority.

To provide flexibility, the ability for the Minister to make legislative instruments to declare that a vessel is, or is not, a 'prescribed ship' will be retained. A mechanism to allow maritime industry employers not covered by the Seacare scheme to 'opt in' to the coverage of the Seacare scheme through an application to the SRCC will also be introduced. This will enable employers with some vessels in the Seacare scheme and some in state or territory schemes to elect to have all of their vessels covered by the Seacare scheme.

3.3.2. Work Health and Safety

At present, to avoid regulatory overlap, the WHS Act does not apply to any vessel or structure to which the OHS(MI) Act applies. To align work health and safety arrangements in the Seacare scheme with the WHS Act, and the model WHS laws upon which the WHS Act is based, the OHS(MI) Act would be repealed and the Commonwealth WHS Act amended to extend its application to the

Seacare scheme (other than facilities located in offshore areas), to the exclusion of state or territory work health and safety laws.

As a consequence of repealing the OHS(MI) Act and extending the application of the WHS Act to the Seacare scheme, the *Work Health and Safety Regulations 2011* (WHS Regulations) and approved Codes of Practice made under the WHS Act would also apply, although their implementation would be delayed for the Seacare scheme.

The duties and requirements in the WHS Act and WHS Regulations are broad based and are capable of applying to a range of sectors, industries and businesses. The section of the maritime industry that is covered by the Seacare scheme is not significantly different from other industries that are covered by general Commonwealth, state or territory work health and safety laws to justify the continuation of separate work health and safety arrangements. Maritime industry employers not currently covered by the OHS(MI) Act already operate under general work health and safety laws in the states and territories.

3.3.2.1 *Health and Safety duties*

The WHS Act provides a similar duty-based regime to the OHS (MI) Act, which aims to minimise risks to the health and safety of persons employed on vessels while they are at work. The OHS(MI) Act requires an operator of a ‘prescribed ship’ or ‘prescribed unit’ to take all reasonable steps to protect the health and safety at work of seafarers.

The WHS Act requires a ‘person conducting a business or undertaking’ (PCBU) to ensure, so far as is reasonably practicable, the health and safety of workers. The duty to ensure health and safety requires the person to eliminate or otherwise minimise risks to health and safety so far as is reasonably practicable. This includes first considering what can be done – that is, what is possible in the circumstances for ensuring health and safety – and then whether it is reasonable in the circumstances to do all that is possible. The standard of ‘reasonably practicable’ is not new in work health and safety legislation and there is extensive case law and guidance surrounding its application.

Table 4 outlines how the primary and upstream duties within the WHS Act would apply to PCBUs operating vessels. **Table 5** outlines how duties would apply to individuals, including officers of a PCBU, workers and other persons at a workplace.

3.3.2.2 *Key differences between the OHS(MI) Act and the WHS Act*

Tables 4 to 13 outline key differences between the operation of the WHS Act and the OHS(MI) Act.

Table 4: Primary and upstream duties of care

Duty	WHS Act	How the duty would apply in the Seacare scheme
<p>Duty to ensure the health and safety of workers Section 19(1)</p>	<p>A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers engaged, or caused to be engaged by the person, and workers whose activities in carrying out the work are influenced or directed by the person, while workers are at work in the business or undertaking.</p>	<p>PCBUs (operators) will owe duties to the extent that business or undertaking is being conducted on a vessel.</p> <p>State work health and safety laws would not apply to PCBUs to the extent that the business or undertaking is being conducted on a vessel.</p> <p>State work health and safety laws would apply to stevedoring companies that load and unload a ship, including if that requires sending workers on-board the vessel.</p>
<p>Duty to ensure health and safety of other persons Section 19(2)</p>	<p>A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.</p>	<p>PCBUs (operators) will owe duties to the extent that business or undertaking is being conducted on a vessel.</p> <p>Duties would extend to persons on and off the vessel that may be put at risk from work carried out on the vessel.</p> <p>State work health and safety laws would not apply to PCBUs.</p>
<p>Duty of persons with management or control of a workplace Section 20</p>	<p>The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.</p>	<p>Person with management or control of a workplace means a PCBU to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace.</p> <p>Applies to PCBUs with management or control of a vessel.</p> <p>State work health and safety laws would not apply to the PCBU.</p>
<p>Duty of persons with management or control of fixtures, fittings or plant at a workplace Section 21</p>	<p>The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.</p>	<p>Applies to PCBUs with management and control of fixtures, fittings or plant on a vessel.</p> <p>State work health and safety laws would not apply to the PCBU.</p>

Table 4: Primary and upstream duties of care

<p>Designers, manufacturers, importers or suppliers of plant, structures or substances</p> <p>Sections 22-25</p>	<p>A PCBU who is a designer, manufacturer, importer or supplier of a plant, structure or substance that is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to it including its handling or construction, storage, dismantling and disposal is, so far as is reasonably practicable, to be without risks to health or safety when used for its intended purpose.</p>	<p>These duties apply to PCBUs that design, manufacture, import or supply plant, structures or substances used on vessels.</p> <p>As PCBUs might supply the same or similar products to vessels and onshore workplaces, state and Commonwealth WHS laws will apply concurrently to PCBUs that design, manufacture, import, or supply plant, structures or substances.</p>
<p>Duties of people installing, constructing or commissioning plant or structures</p> <p>Section 26</p>	<p>A PCBU who installs, constructs or commissions plant or structures must also ensure, so far as is reasonably practicable, all workplace activity relating to the plant or structure including its decommissioning or dismantling is without risks to health or safety.</p>	<p>These duties apply to PCBUs that install, construct or commission plant or structures on vessels.</p> <p>As PCBUs might install the same or similar products to vessels and onshore workplaces, state and Commonwealth work health and safety laws will apply concurrently to PCBUs that install plant, structures or substances.</p>

Table 5: Duties on Individuals

Duty	WHS Act	How the duty would apply in the Seacare scheme
<p>Duty of officers</p> <p>Section 27</p>	<p>An officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.</p>	<p>Would apply to officers within the meaning of section 9 of the <i>Corporations Act 2001</i>. An officer would be a person who makes, or participates in making, decisions that affect the whole or a substantial part of the business or undertaking (i.e. a member of the Board), not just the part of a business or undertaking being conducted by a particular vessel (i.e. the master of a ship would not be an officer).</p>
<p>Duty of workers</p> <p>Section 28</p>	<p>While at work, workers must take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction given by the PCBU to allow the PCBU to comply with work health and safety laws, and cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.</p>	<p>Applies to all workers carrying out work on the vessel including contractors and subcontractors, employees of labour hire companies, apprentices and trainees.</p>

Table 5: Duties on Individuals

<p>Duty of other persons at the workplace Section 29</p>	<p>A person at a workplace must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to comply with work health and safety laws.</p>	<p>Applies to other persons on the vessel, including passengers and workers of stevedoring companies.</p>
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Table 6: Additional Duties

Duty	WHS Act	How the duty would apply in the Seacare scheme
<p>Duty of Officers</p>	<p>Under the WHS Act, an officer of a PCBU must exercise due diligence to ensure the PCBU complies with its health and safety duties. This duty relates to the strategic, structural, policy and key resourcing decisions.</p>	<p>There is no similar duty in the OHS(MI) Act. While operators have primary duties in the OHS(MI) Act, officers of the operator do not have specific duties.</p> <p>In the maritime industry, ‘officers’ are more akin to on-shore managers and would not normally work on-board vessels</p>
<p>Duty of other persons at the workplace</p>	<p>Any person at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to comply with work health and safety laws.</p>	<p>There is no similar duty in the OHS(MI) Act, however a common law duty would apply.</p>
<p>Duty on designers</p>	<p>The WHS Act places a duty on designers of plant, substances and structures.</p>	<p>There is no similar duty in the OHS(MI) Act.</p>
<p>Duties of persons engaged in loading or unloading a ship/unit</p>	<p>There is no similar duty in the WHS Act, however the WHS Act imposes duties on PCBU that supply, install etc. to a workplace. State work health and safety laws would apply to stevedoring companies that load and unload a ship, including if that requires sending workers on-board the ship.</p>	<p>Under the OHS(MI) Act, there is a specific duty for a person engaged in the loading or unloading of a ship/unit to take all reasonable steps to ensure that the ship/unit is not loaded or unloaded in such a way that it is unsafe for others or constitutes a risk to their health and safety.</p>

Table 7: Offences and penalties		
Offence/Penalty	WHS Act	OHS(MI) Act
Breaches of the Act	<p>Breaches of duties of care are criminal offences. Breaches of right of entry provisions are subject to civil remedies, consistent with the <i>Fair Work Act 2009</i>.</p> <p>Civil proceedings can also be brought in relation to discriminatory conduct for a prohibited reason under section 112 of the Act.</p>	The OHS(MI) Act also has criminal offences for breaches of duties of care, but there are no civil penalties under the OHS(MI) Act.
Penalties	<p>The maximum monetary penalty is \$3,000,000 for a corporation and \$600,000 for an individual.</p> <p>Breaches of duty of care may also incur imprisonment. The maximum period of imprisonment available for the most serious breach of the Act is five years.</p>	The maximum monetary penalty is 1000 penalty units (currently \$170,000) for operators or 50 penalty units (currently \$8,500) for employees. The maximum period of imprisonment (for specified breaches) is six months, but this does not apply for a serious breach of a duty of care.
Sentencing options	In addition to fines and custodial sentences, the WHS Act provides for remedial orders, adverse publicity orders, training orders, injunctions, orders for restoration, work health and safety project orders, and the release of an offender under terms of a court-ordered WHS undertaking.	Sentencing under the OHS(MI) Act is limited to monetary penalties.
Infringement notices	The WHS Act contains provisions to establish an infringement notice scheme. The Commonwealth has not established such a scheme.	The OHS(MI) Act does not contain provisions establishing an infringement notice scheme.
Enforceable undertakings	The WHS Act provides that the Regulator may accept a written undertaking given by a person in connection to a contravention or alleged contravention by a person of this Act (Part 11 section 216). The Regulator may also apply to a court for an order if a person contravenes an enforceable undertaking (section 220)	There is no ability for the regulator to accept enforceable undertakings under the OHS(MI) Act.

Table 8: Duties to consult, cooperate and coordinate

Requirement	WHS Act	OHS (MI) Act
Incident notification	A PCBU must ensure that the regulator is notified immediately after becoming aware that a notifiable incident (death of a person, or serious injury or illness of a person, or a dangerous incident) arising out of the conduct of the business or undertaking has occurred. The Act also outlines what is a serious injury or illness and what is a dangerous incident.	There are similar provisions in the OHS(MI) Act, although there is no requirement to notify the regulator immediately. The meaning of the terms and timing and form of reports is prescribed in regulations (currently 4 hours, or as soon as reasonably practicable afterwards, for notification).

Table 9: Duties to consult, cooperate and coordinate

Duty	WHS Act	OHS(MI) Act
Duty to consult with other duty holders	<p>The WHS Act places a duty on the PCBU to consult etc., so far as is reasonably practicable, with all other persons who have a duty in relation to the same matter.</p> <p>This requires duty holders with shared responsibilities to work together to protect the health and safety of workers and other persons.</p>	There is no statutory requirement under the OHS(MI) Act to consult with other duty holders, however consultation may be necessary in order for duty holders to discharge their duties under the Act.
Duty to consult workers and their representatives	<p>The WHS Act places a duty on a PCBU to consult, so far as is reasonably practicable, with workers. The duty is not limited to employees but extends to contractors.</p> <p>The WHS Act also prescribes what is required for consultation purposes and when it is required.</p> <p>This requires PCBUs to consult with workers and their representatives over work health and safety matters and give workers a reasonable opportunity to express their views, raise work health and safety matters and contribute to decisions on work health and safety matters.</p>	The OHS(MI) Act places a duty on the operator of a prescribed ship or unit to take all reasonable steps to develop an OHS policy in consultation with involved unions.

Table 10: Representation and participation

Requirement	WHS Act	OHS(MI) Act
Establishment of work groups	<p>The WHS Act provides that a work group may be determined for workers engaged in two or more businesses or undertakings.</p> <p>Due to the broad definition of worker, workers other than ‘employees’ such as contractors and labour hire workers can be members of a work group.</p> <p>A PCBU must if asked by a worker include the worker’s representative in negotiations about the workgroup.</p>	<p>Under the OHS(MI) Act, a request to an operator to enter into consultations to establish a designated work group in respect of employees of the operator on a prescribed ship or unit may be made by an employee or union (if there is one involved). An operator has the right to enter into consultations at any time if they believe that a designated work group should be varied. The designated work group is comprised only of employees.</p>
Health and Safety Representatives (HSRs)	<p>The WHS Act provides that a worker may ask that the PCBU facilitate the conduct of an election for one or more HSRs to represent workers.</p> <p>A HSR holds office for a period of three years.</p>	<p>Under the OHS(MI) Act, only one HSR may be selected for each designated work group and holds office for two years.</p>
Training of HSRs	<p>The WHS Act provides that a PCBU must, if requested, allow the HSR to attend training (currently 5 days) that is approved by the Regulator (Comcare); and is a course that the HSR is entitled to attend; and that it is chosen by the HSR in consultation with the PCBU.</p>	<p>The OHS(MI) Act requires a HSR to undertake a course of training accredited by the Seacare Authority but does not specify the number of days.</p>
Power to issue Provisional Improvement Notices (PINs)	<p>The WHS Act provides HSRs with the power to issue PINs provided that the HSR has consulted the person receiving the PIN.</p> <p>The HSR cannot issue a PIN unless the HSR has completed relevant training.</p> <p>PINs may be issued by leaving the notice with the person with management and control of the workplace to which the notice relates, or by delivering the notice at the person’s usual place of business.</p>	<p>A HSR may issue a PIN to a person in command.</p> <p>While a HSR must be trained, they may issue PINs before undertaking training.</p>

Table 10: Representation and participation

<p>Issue resolution</p>	<p>The WHS Act provides that parties to a work health and safety issue must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with an agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the Regulations.</p> <p>Where an issue cannot be resolved after reasonable efforts have been taken, the issue can be transferred to the Regulator to arrange for an inspector to attend the workplace to assist in resolving the issue.</p>	<p>There are no specific provisions for issue resolution in the OHS(MI) Act, although there are provisions dealing with disagreements in relation to the establishment or variation of work groups and directions to stop unsafe work.</p>
<p>Right of worker to cease unsafe work</p>	<p>The WHS Act provides that a worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard.</p>	<p>The OHS(MI) Act allows HSRs to direct that unsafe work cease in certain circumstances but does not provide individual workers with that right.</p>

Table 11: Discriminatory, coercive and misleading conduct.

Requirement	WHS Act	OHS(MI) Act
<p>Prohibition of discriminatory, coercive or misleading conduct</p>	<p>The WHS Act has wide ranging provisions that prohibit a person directly or indirectly engaging in discriminatory conduct for a prohibited reason.</p> <p>Criminal or civil action may be taken in respect of this provision. Reverse onus of proof applies in this provision.</p>	<p>The OHS(MI) Act includes similar provisions prohibiting discriminatory conduct, but ‘discriminatory conduct’ and ‘prohibited reason’ are more narrowly defined.</p> <p>Reverse onus of proof applies. A contravention may incur a financial penalty, but penalties are significantly lower under the OHS(MI) Act compared to the WHS Act.</p>

Table 12: Union right of entry

Requirement	WHS Act	OHS(MI) Act
Workplace entry by permit holders	<p>The WHS Act confers powers on authorised representatives of unions (work health and safety permit holders) to enter workplaces for OHS purposes.</p> <p>A work health and safety entry permit holder may enter a workplace to inquire into a suspected contravention of the WHS Act (without notice), or to consult and advise relevant workers who wish to participate in the discussions on work health and safety matters (with at least 24 hours' notice of entry).</p>	<p>There are no right of entry provisions in the OHS(MI) Act, although operators are subject to right of entry provisions in the Fair Work Act.</p>

Table 13: Review of decisions

Requirement	WHS Act	OHS (MI) Act
Internal review	<p>The WHS Act provides for a two-stage review process of certain decisions (e.g. issuing of statutory notices by an inspector), starting with internal review followed by external review by the Fair Work Commission.</p>	<p>The OHS(MI) Act does not provide for internal review but provides for external review by the Fair Work Commission.</p>

3.3.2.3 Regulations

The OHS(MI) Regulations set out administrative matters relating to the elections for HSRs, forms for PINs and other notices and procedures and forms for notifying and reporting incidents. The (OHS(MI)(NS) Regulations set out requirements relating to hazardous substances (limited to scheduled carcinogenic substances), manual handling and confined spaces.

The WHS Regulations specify the way in which some duties under the WHS Act must be met and prescribe procedural or administrative requirements to support the WHS Act. They cover a wide range of matters relating to WHS, including the matters covered by the OHS(MI)(NS) Regulations outlined above.

As a consequence of repealing the OHS(MI) Act and extending the WHS Act to apply to the Seacare scheme, the Regulations made under the WHS Act and the approved Codes of Practice will also apply, although their operation may be modified (for example, phased in) or removed for the Seacare scheme.

Like the WHS Act, the requirements and guidance in the WHS Regulations are broad based and are capable of applying to a range of sectors, industries and businesses. Some of the WHS Regulations will not be relevant to maritime activities and will have no effect on Seacare scheme participants. Most of the chapters of the WHS Regulations will be relevant for Seacare scheme participants.

The WHS Regulations will be phased in over a period of time. Only WHS Regulations that have broad application or are similar to those that apply currently will be applied from 1 July 2017. Further discussions will be held with Seacare stakeholders over the next two years to discuss the phasing in of the WHS Regulations, with a view to them commencing from 1 July 2019.

3.3.2.4 Codes of Practice

Codes of Practice provide practical guidance on how to meet the standards set out in the WHS Act and Regulations. They are admissible in court proceedings as evidence of what is reasonably practicable in the circumstances for a duty holder to meet their obligations under the WHS laws. They can also be referred to by an inspector when issuing an improvement or prohibition notice.

There are two Codes of Practice under the OHS(MI) Act. The Seacare Authority Code of Practice 1/2000 (Seacare Code) adopts in identical terms the Australian Offshore Support Vessel Code of Safe Working Practice and the Code of Safe Working Practice for Australian Seafarers issued by AMSA. The Approved Code of Practice for Manual Handling (Maritime Industry) provides practical guidance relating to managing the risks arising from manual handling in a maritime environment.

There are 23 approved Codes of Practice made under the WHS Act, which adopt model WHS Codes agreed by a majority of work health and safety Ministers. Some Codes of Practice provide guidance relevant to all industries (e.g. *How to Manage Work Health and Safety Risks*) or on issues covered in existing Seacare Codes (Hazardous Manual Tasks), while others will not be relevant to maritime activities (Demolition Work)

By repealing the OHS(MI) Act and extending the WHS Act to the Seacare scheme, current Codes of Practice made under the OHS(MI) Act would cease to have effect, while Codes of Practice made under the WHS Act would apply to the Seacare scheme.

Similar to the WHS Regulations, only WHS Codes of Practice that have broad application will be applied from 1 July 2017. Further discussions will be held with Seacare stakeholders over the next

two years to discuss the phasing in of the remaining WHS Codes of Practice, with a view to them commencing from 1 July 2019.

3.3.3. Workers' Compensation

3.3.3.1 Addressing Inconsistencies between the Seafarers Act and SRC Act

The Seafarers Act was aligned with the provisions in the SRC Act when it was first passed in 1992 but has not kept pace with the workers' compensation changes in in the SRC Act.

The Stewart-Crompton Review recommended changes to the Seafarers Act to give effect to a list of inconsistencies identified by Comcare between the Seafarers Act and the SRC Act. The Stewart-Crompton Review also listed entitlement provisions in the Seafarers Act that had been identified separately during the Review as needing to be made consistent with the SRC Act.

Most of these inconsistencies would be addressed under this option. This would include clarifying the meaning of some terms, e.g. that an 'action for non-economic loss' is not limited to formal legal proceedings but can include settlement negotiations, and the meaning of 'medical treatment' and 'superannuation scheme'. These clarifications would not have any financial impact on employers or workers, but would assist both with interpreting certain provisions of the Seafarers Act.

It is proposed that the Seafarers Act threshold for compensation for hearing loss will be reduced from 10% to 5% binaural the permanent impairment of hearing loss, consistent with the SRC Act. The limit for reasonable funeral expenses would also be increased from \$5,838.09 to \$10,735.29 to be consistent with the SRC Act.

The workers' compensation changes, including both addressing inconsistencies with the SRC Act and other technical changes, are listed in **Tables 14 to 18** below.

Table 14: Definitions

<p>'action for non-economic loss' – s 3</p>	<p>Clarifies an action for non-economic loss is not restricted to the formal institution of proceedings but can include processes like settlement negotiations and consultations.</p>
<p>'medical treatment' – s 3</p>	<p>Enables legislative rules to be made to include a wider range of compensable medical treatment.</p>
<p>'superannuation scheme' – s 3</p>	<p>Extends the definition of superannuation scheme to include retirement savings accounts, reflecting updated approaches to superannuation arrangements.</p>

Table 15: Benefit changes

Payment of medical related expenses – s 28	Enables reimbursement of medical related expenses (at the direction of the employee) to the medical treatment provider or the employee if they have paid for the treatment.
Reduction in threshold for binaural hearing loss to improve access to compensation for injuries resulting in permanent impairment - s 40	Reduces the qualifying threshold for a permanent impairment that is a binaural hearing loss from 10% to 5% to align with the SRC Act and other jurisdictions.
Increase to death benefit – s 30(2)	Aligns the maximum amount of compensation payable in respect of funeral expenses with the SRC Act.

Table 16: Improvements to Seacare scheme integrity

Clarification that dependents of deceased employees have access to common law remedies against the employer of the deceased – s 54	Clarifies that where an employee’s injury results in death, the dependants of the deceased employee are not prevented from bringing an action against the employer, even where the employee may have made a previous election.
Clarification of employees ability to bring action for non-economic loss – s 55	Clarifies that an election by an employee to institute an action or proceeding against their employer or another employee does not prevent the employee from doing any other thing that constitutes an action for non-economic loss.
Clarification of requirements in relation to proceedings and consequences of election and payment of damages – ss 56-60	Aligns provisions with the SRC Act by substituting references to ‘proceedings’ with the broader term of ‘claims’. ‘Claims’ encompasses settlements resulting from negotiation whether or not that claim or action progressed to the formal institution of proceedings or was made at common law.

Table 17: Changes to eligibility thresholds

<p>Injury which is a disease - contribution of employment to shift from the 'material degree' to a 'significant degree' – s 3 and new s 5B</p>	<p>Increases threshold to align with the SRC Act. Employment must contribute to disease suffered by employee to a 'significant degree' rather than 'material degree'.</p> <p>This measure is likely to be opposed by some stakeholders but is intended to form part of a balanced approach to updating the Seacare scheme to align with the Comcare scheme and a number of the States.</p>
<p>Psychological injuries-exclusions - shift from 'reasonable disciplinary action' to 'reasonable administrative action' – new s 5A</p>	<p>The Seafarers Act currently excludes compensation for injuries as a result of 'reasonable disciplinary action' or an employee's 'failure to obtain a promotion, transfer or benefit'. This definition will be replaced with the concept of 'reasonable administrative action taken in a reasonable manner'. A new section will also be added providing a non-exhaustive list of the actions which may constitute 'reasonable administrative action'. This will align with the SRC Act.</p> <p>This broader exclusion is not anticipated to have a significant impact because of the low number of claims for psychological injury in the sector.</p>

Table 18: Other technical changes

<p>Updates to references to other Commonwealth legislation – s 135</p>	<p>Updates references to other Commonwealth legislation - the <i>Child Support (Registration and Collection) Act 1988</i>, the Social Security Act, and the <i>Family Law Act 1975</i> – to reflect current practice regarding the treatment of compensation payments for the purposes of assignment and attachment.</p>
<p>Removal of redundant references</p>	<p>References to "industry panel", "Seafarers Engagement Centre" and "industry trainee" will be removed from provisions.</p>
<p>Administrative Appeals Tribunal – Costs – s 91</p>	<p>Clarifies that the AAT may order claimants costs where determination about eligibility for compensation is reconsidered by a determining authority on its own motion and proceedings are rendered abortive.</p>

3.3.3.2 Age pension

It is proposed that the Seafarers Act be amended to accommodate recent amendments to the age of eligibility for the age pension in the Social Security Act, and any future amendments, by replacing references to specific ages with references to 'pension age'. This would ensure that the age at which injured employees cease to be eligible to receive workers' compensation will align with the age at which they are eligible to receive the age pension.

3.3.3.3 Attendant Care for Catastrophic Injuries

The Seafarers Act would be amended to allow for the introduction of the National Injury Insurance Scheme (NIIS), which will provide minimum benchmarks for lifetime care and support for employees who have sustained a catastrophic injury in the workplace. The amendments would enable caps on attendant care and household services to be removed for employees with a catastrophic injury.

The new provision would not come into effect until the benchmarks are set and rules have been made defining the meaning of 'catastrophic injury'.

3.3.3.4 *Journey Claims*

The Seafarers Act would be amended to provide that an injury suffered by an employee while travelling at the direction or request of their employer, for the purpose of their employment will not be treated as having arisen out of, or in the course of, their employment, in the circumstances set out. These circumstances include where for a personal or domestic reason:

- the employee delayed commencing the journey;
- the employee used a route that was not direct; or
- there was an interruption in the journey.

The exception to this is that an employee may delay or interrupt their journey with the written agreement of their employer, provided that the delay or interruption is not more than 72 hours.

3.3.4. *Cost Recovery Levy and Fees*

Governments generally recoup costs of work health and safety schemes by requiring participants to financially contribute to the cost of the system under which they are being regulated, whether through application fees, regulatory levies, directly paying the regulator when investigations are undertaken or workers' compensation premiums. However, the Seacare scheme does not require Seacare scheme participants to financially contribute to the cost of being regulated by the Seacare scheme.

The existing Levy Act and Levy Collection Act provide for the collection of a Safety Net Fund Levy from Seacare scheme employers. Levy amounts are paid into the Safety Net Fund (the Fund), which provides compensation for injured employees whose employer has defaulted on compensation liabilities. The levy is calculated based on the number of seafarer berths on the first day of each quarter.

Under the reform option, a mechanism would be introduced to enable the Government to charge a levy to recover the SRCC, Comcare and AMSA's costs for undertaking their regulatory functions for the Seacare scheme.

It is proposed that the Levy Act and Levy Collection Act will be repealed and replaced with new Acts. The new Acts will provide a mechanism to charge and collect both the existing Safety Net Fund levy (to be renamed the Seafarers' Insurance Levy) and a new cost recovery levy. The Safety Net Fund levy will initially be set at its existing level (\$15 per seafarer berth). The cost recovery levy will initially be set at \$0. Following consultation with industry stakeholders, the Government will determine if a levy should be charged and, if so, at what level it should be set.

The Seafarers Insurance Levy and cost recovery levy (when charged) would be calculated and collected in the same way as the existing Safety Net Fund levy (calculated per seafarer berth on the first day of a quarter).

Cost recovery fees would also be introduced to recover costs incurred by AMSA, the SRCC and Comcare for a limited range of services provided directly to Seacare scheme participants, such as processing applications for exemptions from the Seacare scheme. Fees will be collected by the entity providing the service.

3.3.5. Governance

On 15 December 2014, as part of its Smaller Government Reform Agenda, the Government announced its intention to transfer the statutory functions of the Seacare Authority to the SRCC.

A direct transfer of the Seacare Authority's functions to the SRCC would result in the SRCC performing certain functions under the Seafarers Act that are performed by Comcare, rather than the SRCC, under the SRC Act. It would not be appropriate or efficient for the SRCC to perform functions for the Seacare scheme that it does not perform for the Comcare scheme. To address this issue, it is proposed that these functions of the Authority be transferred directly to Comcare, rather than the SRCC.

The current SRCC membership includes:

- an independent Chair,
- three representatives of unions,
- a representative of the Commonwealth,
- a representative of licensees,
- a representative of members and former members of the Defence Force,
- a representative of Australian Capital Territory public sector employers,
- the Chief Executive Office of Safe Work Australia, and
- a member with qualifications or experience relevant to the SRCC's functions.

It is proposed that the membership of the SRCC not be amended to include representatives of maritime industry or unions. However, to ensure that maritime industry representatives have an opportunity to provide advice and contribute to decision making affecting the Seacare scheme, the Chairperson of the SRCC will be empowered to establish a Seafarers Advisory Group (Advisory Group).

The Advisory Group would include individuals representing Seacare employers and maritime unions. Its role would be to provide advice to the SRCC and Comcare on matters affecting the operation of the Seacare scheme, including the granting of opt-in declarations and exemptions from coverage, the amount of any cost recovery levy and the development of Codes of Practice.

4. Impact Analysis

This section outlines the impact and non-regulatory benefits and costs of each option on Seacare scheme employers, employees and the Government.

4.1. Option 1 – Status Quo

This option does not impose any additional regulatory cost on Seacare scheme employers or others. Seacare scheme participants continue with existing arrangements with which they are familiar. However, this option does nothing to address the problems with the Seacare scheme. Opportunities to achieve more efficient and effective oversight of the Seacare scheme and benefits through improved work health and safety outcomes and greater clarity over the coverage of the Seacare scheme are lost.

As per Australian Government policy, the impacts and regulatory costs of options 2 and 3 are determined relative to this option.

4.2. Option 2 – Abolish the Seacare scheme

4.2.1. Work Health and Safety

If the OHS(MI) Act was repealed, employers would no longer have to comply with the specific duties and regulatory requirements imposed by the OHS(MI) Act and regulations made under that Act. However, they would be required to comply with similar duties and regulatory requirements after transferring to coverage by state and territory work health and safety legislation.

Most states and territories have work health and safety legislation based on the model WHS laws, which is expected to provide superior safety outcomes to the OHS(MI) Act. It is to be expected that employers and employees would benefit from improved safety outcomes by transitioning from the OHS(MI) Act to state and territory work health and safety legislation based on the model WHS laws. There would be fewer injuries to employees, resulting in lower costs for employers (and their insurers) from workers' compensation for injured workers and costs of replacing injured workers. Workers would also benefit from reduced injury incidence through greater income from working than what they would receive through workers' compensation while injured, elimination of costs from workplace injuries that are not covered by workers' compensation and significantly improved quality of life from not suffering a serious injury.

Since the Commonwealth WHS Act is also based on the model WHS laws, employers and employees would be expected to achieve the same benefits from improved safety outcomes after transferring to coverage by state and territory work health and safety laws as they would after transferring to the Commonwealth WHS Act (as proposed in Option 3, see Section 4.3.2).

4.2.2. Workers' Compensation

If the Seafarers Act was repealed, employers would no longer be required to obtain workers' compensation insurance from a private sector insurer or pay workers' compensation under the Seafarers Act. They would not be required to perform functions associated with managing claims for workers' compensation under the Seafarers Act. They would also not be required to provide information to the Seacare Authority about workers' compensation insurance arrangements or employee numbers for the purpose of the Safety Net Fund levy.

Employers would transfer to state and territory workers' compensation schemes, which have similar requirements to the Seafarers Act for employers to obtain workers' compensation insurance and pay compensation, manage claims and provide information to a regulator.

On average, insurance premiums are lower in state and territory schemes than in the Seacare scheme, although premiums for maritime industry employers may be higher than average given the high risk nature of the work. There is likely to be a long-term overall benefit for Seacare employers from repealing the Seafarers Act and moving into state and territory workers' compensation schemes from paying lower premiums to obtain workers' compensation insurance. There may also be a benefit for employers who currently are required to have separate insurance coverage to meet legal obligations under both Commonwealth and state workers' compensation laws.

While it is difficult to make definitive comparisons of benefits across different workers' compensation jurisdictions, the Seacare scheme is generous compared to state and territory workers' compensation schemes (especially compared to states where the total amount paid in weekly compensation payments is capped). Some employees may experience a reduction in workers' compensation benefits under state and territory workers' compensation schemes, compared to what they would have received under the Seacare scheme. The overall amount of this reduction has not been quantified because of the complexities of calculating differences in compensation amounts, including weekly compensation and permanent impairment compensation, between the Seacare scheme and each state and territory scheme.

Economic factors affecting the Australian maritime industry, in particular employers in the current Seacare scheme, include domestic demand for transported goods (both domestically produced goods and imported goods), international demand for domestically produced goods (including goods produced with the assistance of vessels) and costs (labour and workers' compensation costs).

While this option is expected to provide an overall benefit to employers from reduced workers' compensation insurance costs (from transferring to state and territory workers' compensation Seacare schemes and improved safety outcomes), in isolation of any changes to broader economic factors affecting the Australian maritime industry or other costs, this option is not expected to have any significant impact on the size of the Australian maritime industry, the nature of the industry or employment opportunities in the industry.

4.3. Option 3 – Reform of the Seacare scheme

4.3.1. Coverage

Clarifying coverage as proposed would have limited financial impact on employers since no changes to the scope of coverage are proposed and only limited changes to the test for determining coverage are proposed. While the proposed changes would remove coverage for 'prescribed ships' operating in the Northern Territory (unless they meet other coverage criteria), this is not expected to have any significant impact on the coverage of the Seacare scheme since a number of vessels operating solely within the Northern Territory maintain exemptions from the Seacare scheme.

Employers (both in and outside of the Seacare scheme) and employees would benefit from clearer coverage provisions that make it easier for them determine if they are covered by the Seacare scheme, and need to obtain insurance under the Seacare scheme, or not. This would be expected to reduce costs for employers from determining coverage for their vessels and reduce the number of claims that are disputed over coverage matters.

Benefits are outlined further in the Regulatory Costs chapter (Section 5.2.1). This proposal is not expected to have any broader effects on the Australian maritime industry or Seacare employers, but will address a current administrative burden of Seacare employers and a number of other maritime industry employers.

4.3.2. Work Health and Safety

4.3.2.1 Impacts of the WHS Act on Seacare Employers and Workers

Extending the WHS Act to the Seacare scheme would be expected to have significant overall benefits for employers and employees compared to retaining the OHS(MI) Act by improving safety outcomes.

The WHS Act comprises modern, up to date work health and safety laws and facilitates the implementation of modern work health and safety practices. The OHS(MI) Act, on the other hand, contains outdated laws that were designed for workplaces of the early 1980s and 1990s.

The WHS Act encourages safety leadership in workplaces. It provides a positive duty on officers to exercise due diligence on work health and safety matters. This duty is not included in the OHS(MI) Act. To ensure compliance with this duty, Seacare employers would be expected to offer training to their officers (as defined in the WHS Act, not necessarily seafarers whose position includes the word 'officer') to ensure that they understand their duty and exercise due diligence on work health and safety matters within their organisation.

Seacare employers would also be expected to offer short training to all workers to ensure that they have an understanding of their duties under the WHS Act and how the WHS Act operates in comparison to the OHS(MI) Act. The duties of workers are broadly similar to those of the OHS(MI) Act, so the training is not expected to be extensive.

The regulatory costs to employers of training officers and other staff on their duties under the WHS Act and the operation of the WHS Act are outlined further in the Regulatory Costs chapter (Section 5.2.2).

There are no provisions for right of entry for union officials in the OHS(MI) Act. Under the proposal to expand the coverage of the WHS Act to include the Seacare scheme, union officials representing Seacare employees who hold a right of entry permit would be able to exercise right of entry on Seacare vessels for work health and safety purposes to inquire into a suspected contravention of the WHS Act or to consult and advise workers. This is not expected to impose regulatory costs for employers since union officials can already exercise right of entry on Seacare vessels under the *Fair Work Act 2009*.

The WHS Act includes a number of differences from the OHS(MI) Act that would be expected to influence employer and employee behaviour to improve safety outcomes, without creating additional regulatory costs.

The WHS Act facilitates shared responsibility for health and safety matters by requiring duty holders to, so far as is reasonably practicable, consult, cooperate and coordinate activities with each other. This would explicitly require Seacare employers to consult, cooperate and coordinate activities with other duty holders where they share responsibility for a health and safety matter. This requirement is not expected to have any regulatory impact on employers as currently under the OHS(MI) Act employers would be required to consult, cooperate and coordinate activities with other duty holders to discharge their duty.

Compared to the OHS(MI) Act, the WHS Act includes substantially higher maximum penalties for breaches of work health and safety duties. The maximum penalty under the WHS Act is \$3 million for a corporation and \$600,000 for an individual, compared to \$180,000 for operators and \$9,000 for employees under the OHS(MI) Act. Breaches of duties of care may also incur imprisonment under the WHS Act. These substantially higher maximum penalties under the WHS Act would be expected to be much more effective at deterring employer non-compliance with work health and safety duties compared to the penalties in the OHS(MI) Act and contribute substantially to improving safety outcomes.

The WHS Act also provides for a wider range of tools for facilitating a graduated approach to compliance and enforcement compared to the OHS(MI) Act. Under the OHS(MI) Act, only monetary penalties can be ordered against employers. In addition to fines and custodial sentences, the WHS Act provides for remedial orders, adverse publicity orders, training orders and other sentences to enforce compliance with work health and safety laws. These alternative sentencing methods would be expected to enhance the ability of the courts to enforce compliance with work health and safety laws and encourage ongoing compliance, improving safety for workers.

The WHS Act also provides additional mechanisms to achieve compliance with work health and safety laws. It would enable AMSA to accept enforceable undertakings from employers in connection to a contravention (or alleged contravention) of work health and safety laws to enforce compliance. This mechanism would be expected to enhance the ability of AMSA enforce compliance with work health and safety laws, improving safety for workers, while reducing the need for AMSA to prosecute employers for alleged contraventions to achieve compliance.

The benefits from improved safety outcomes expected from expanding the coverage of the WHS Act to include the Seacare scheme are quantified below (subsection 4.3.2.1).

There are other benefits for employers from the proposal to expand the coverage of the WHS Act to include the Seacare scheme. Adopting work health and safety laws based on the model WHS laws that apply in most jurisdictions¹ would enable Seacare employers to implement national policies and procedures applying to all their employees Australia-wide, including employees that work on-board vessels not covered by the Seacare scheme and employees that are not seafarers.

The proposal would also have a number of direct impacts on employees and other workers covered by the Seacare scheme, particularly in relation to representation and participation in work health and safety matters. Under the OHS(MI) Act, one employee may be elected as a HSR for a designated work group. The elected employee HSR must be provided with training to perform their role, which is funded by Seacare employers. A HSR may issue a PIN to a person in command in relation to safety issues on-board a vessel.

Under the proposal to expand the coverage of the WHS Act to include the Seacare scheme, more than one employee HSR may be elected, but there will be no automatic requirement for an elected HSR to receive employer-funded training. Instead, an elected HSR may request training from the

¹ Victorian OHS laws are substantially aligned with the model WHS laws. Western Australia is in the process of substantially aligning their OHS laws with the model WHS laws.

employer. Following such a request, the employer must organise for the HSR to receive training and fund the training. Only a HSR that has received training may issue a PIN.

These impacts are not expected to introduce any regulatory costs for employers or employees. Current HSRs who have received training would be considered to be trained under the WHS Act (there would not be any need for them to receive additional training). It is not expected that these changes would result in an additional number of HSRs seeking employer-funded training compared to existing arrangements. Employees in a work group will be able to elect additional HSRs, which may assist with improving safety, without adding regulatory costs for employers since it is only compulsory for an employer to arrange training for an employee if they request it.

Under the OHS(MI) Act, HSRs can direct that unsafe work cease, but there is no right for individual workers to cease unsafe work. As a result of expanding the coverage of the WHS Act to the Seacare scheme, employees would have a right to cease, or refuse to carry out, work if they have a reasonable concern that carrying out the work would present a serious health and safety risk. This change may improve safety outcomes for workers.

AMSA, the work health and safety inspectorate for the Seacare scheme, will also benefit from being able to draw on the resources, expertise and experience of other work health and safety regulators who apply same laws. This will assist AMSA to communicate with Seacare employers and employees on work health and safety matters and build knowledge and expertise in compliance and enforcement of work health and safety laws based on the model WHS laws.

4.3.2.2 Specific Impacts of the WHS Regulations and Codes of Practice

The application of the WHS Regulations and Codes of Practice will facilitate the WHS Act improving safety outcomes, which is expected to benefit employers, employees and the community.

Since only the WHS Regulations that are similar to those that apply currently will be applied from 1 July 2017, they are not expected to impose any regulatory burden on employers in addition to the regulatory burden imposed by the existing regulations that apply to the Seacare scheme.

Further discussions on the application of the remaining WHS Regulations will be held with Seacare scheme employers and employees over the next two years, with a view to phasing in the application of the WHS Regulations after two years with appropriate modifications for the Seacare scheme.

The most significant impact on employers and employees from the implementation of the WHS Regulations would be from the introduction of a licensing scheme to regulate the performance of specified classes of high risk work. This would require employees who perform certain classes of high risk work to obtain a high risk work licence to perform that work.

It is expected that current employees who perform the specified classes of high risk work would already have completed the training necessary to perform the work and obtain a licence, but are not likely to have the licence since there is no current requirement under the OHS(MI) Act and OHS(MI)(NS) Regulations for them to hold a licence. Current employees, and new employees from the time of introduction, who perform this high risk work would be required to obtain licenses from state and territory work health and safety regulators.

The regulatory costs to employees from obtaining high risk work licenses to perform certain classes of high risk work are outlined further in the Regulatory Costs chapter (Section 5.2.2). Employers would be required to ensure that any employee performing a class of high risk work holds the

required licence, although this is not expected to impose any regulatory burden on employers. The introduction of high risk work licensing may also support improved safety outcomes.

Codes of Practice do not impose on employers an additional regulatory burden to the WHS Act and Regulations. They provide guidance on how the requirements of the WHS Act and Regulations can be met. Employers can apply different approaches than outlined in a Code of Practice to meet the WHS Act and Regulations requirements if they achieve at least an equivalent standard of safety.

4.3.2.3 *Benefits from Improvements in Safety Outcomes*

Improving safety outcomes in the Seacare scheme would have significant benefits for Seacare scheme employers and employees. Workers' compensation premiums for employers (and their insurers) would be expected to decrease. There would be less time lost due to injury and employers would avoid costs associated with replacing employees either temporarily or permanently employees. Workers would benefit through greater income from working than what they would receive through workers' compensation while injured, elimination of costs from workplace injuries that are not covered by workers' compensation and significantly improved quality of life from not suffering a serious injury. The community would benefit from reduced costs of funding medical expenses of injured seafarers.

The RIS for the introduction of model WHS laws across Australia suggested that the minimum expected reduction in workplace injuries resulting from alignment with model WHS laws would be at least 1.4 per cent.²

Given the current work health and safety performance of the Seacare scheme and reduction in safety incidents following the implementation of the model WHS laws, it is reasonable to expect that expanding the WHS Act to include Seacare will have some positive impact on work health and safety performance for the Seacare scheme. The estimate of 1.4 per cent is used in this analysis as the lower-bound of reduced work safety incidents from Seacare scheme alignment.

One stakeholder suggested that the reduction in workplace injuries could be in the order of 5 per cent to 10 per cent. This estimate is reasonable given other estimates of the impact of implementing aspects of the model WHS laws and outcomes observed in those jurisdictions that have implemented the model WHS laws. The reported reduction in safety incidents achieved in those jurisdictions that have implemented the model WHS laws is also modelled by the experience in NSW, which made certain changes to its work health and safety legislation in 2001 that were later adopted in the model WHS laws. This was reported in 2006 to deliver a 9 per cent reduction in safety incidents.³

The estimate of 5 per cent, based on the lower estimate provided by the stakeholder, is used in this analysis as the upper bound of reduced work safety incidents from Seacare scheme alignment.

² Decision Regulation Impact Statement for a Model Occupational Health and Safety Act, Access Economics, December 2009.

³ ACIL Tasman (2004) *Occupational Health and Safety: Economic Analysis, Report for WorkCover*

The costs of work-related injuries are borne by employers, workers and the community. In 1995, the Industry Commission⁴ (now the Productivity Commission) estimated that only 25 per cent of the total cost of work-related injury and disease was due to the direct costs of work-related incidents (for example, workers' compensation premiums paid by employers or payments to injured workers from compensation schemes). The remaining 75 per cent related to indirect injury costs such as loss of productivity, loss of income and quality of life. This 1:3 direct to indirect cost ratio was considered a conservative estimate as not all indirect costs could be quantified. Subsequent reports by the National Occupational Health and Safety Commission and SWA have refined the method for calculating indirect costs but have not specified a new ratio. To address the underestimation of indirect costs, a slightly higher ratio of 1:4 is often applied, although this does vary by sector and severity of injury from as low as 1:2 to as high as 1:50.⁵

The more conservative 1:4 ratio is used to estimate the indirect safety benefits from aligning the Seacare scheme, since there is not sufficient data to directly calculate these indirect costs and so as not to overestimate the potential safety benefits. When adjusting for this ratio, the overall benefits from improved safety outcomes associated with the proposed changes are estimated to be between **\$1.050 million-\$3.750 million per year** across the Seacare scheme.

In 2012, SWA estimated that the cost of workplace injuries borne by employers was 16 per cent of the total cost of workplace injuries, the cost borne by the community is 10 per cent, and the cost borne by workers is 74 per cent (using an ex-ante approach to estimating costs).⁶ If benefits of the proposed changes are shared in the same manner, the changes are estimated to provide benefits of **\$0.168-\$0.600 million per year** for employers (\$5,000-\$18,000 per employer per year), **\$0.777-\$2.775 million per year** for workers and **\$0.105-\$0.375 million per year** for the community.

The estimated benefits to Seacare scheme employers from improvements in safety outcomes are expected to significantly outweigh the estimated compliance costs of implementing the WHS Act, since the benefits are ongoing while the expected compliance costs are estimated to be minor and are mostly upfront costs. However, in isolation of any changes to broader economic factors affecting the Australian maritime industry or other costs (as outlined in Section 4.2.2), these benefits are not expected to have any significant impact on the size of the Australian maritime industry, the nature of the industry or employment opportunities in the industry.

4.3.3. Worker's Compensation

No significant changes to the Seafarers Act workers' compensation arrangements are proposed under this option. On that basis, this option is not expected to have any significant costs or benefits for Seacare employers and employees. Seacare employers will continue to be required to obtain workers' compensation insurance and the changes proposed are not expected to have any significant impact on the cost of this insurance. However, some of the changes will have minor

⁴ Industry Commission (2005), *Work Health and Safety, An Inquiry into Occupational Health and Safety* p.22

⁵ Prepared by Allen Consulting Group for WorkSafe Victoria (2007). *Regulatory Impact Statement: proposed Occupational Health and Safety Regulations 2007 and proposed Equipment (Public Safety) Regulations 2007*.

⁶ Safe Work Australia (2012), *The Cost of Work-Related Injury and Illness for Australian Employers, Workers and the Community*

impacts on the eligibility of employees for compensation, amounts of compensation paid to employees and the age up to which they can receive compensation.

The proposal to reduce the threshold for compensation for hearing loss potentially provides a benefit to employees by enabling some to receive compensation for hearing loss that are not eligible under the current Seafarers Act. However, there are very few claims for hearing loss in the Seacare scheme. It is included in the Seacare Authority 2014-15 Annual Report in the 'other' claims group, which made up only 8 per cent of the 173 claims made during the year. On that basis, this change would not be expected to have a significant aggregate impact for employers or employees.

The proposal to increase the limit for reasonable funeral expenses also potentially provides a benefit to the families of deceased employees. However, there have only been two reported deaths in the Seacare scheme in the previous five years. On that basis, this change would also not be expected to have a significant aggregate impact for employers or employees (or the families of workers).

The proposal to increase the Seafarers Act threshold for level of contribution to injury for diseases to be compensable from a 'material degree' to a 'significant degree' potentially has a cost for some employees who would be eligible to receive compensation under the current Seafarers Act by making them ineligible to receive compensation. However, the number of claims for compensation in the Seacare scheme for disease-related injuries is small. This change may impact as little as one or two claims, so it would not be expected to have a significant aggregate impact on employers or employees.

The proposal to align the retirement age in the Seafarers Act with the age of eligibility for the age pension in the Social Security Act would benefit employees by enabling them to receive workers' compensation under the Seafarers Act for a longer period of time. This would meet a possible gap when no entitlements are paid between an employee's workers' compensation entitlements ceasing and their eligibility for the age pension commencing.

This overall benefit of these changes for injured employees is estimated to be around **\$0.1 million per year**. This represents a transfer from employers (and their insurers) to employees.

Given the minor and technical nature of the proposed workers' compensation changes and limited expected impacts, these changes are not expected to have any broader impacts on Seacare scheme employers of the Australian maritime industry.

4.3.3.1 *Attendant Care for Catastrophic injuries*

The financial impact of the NIIS has been assessed by Treasury as part of its RIS for the introduction of the NIIS.

This amendment would provide a significant potential benefit for employees in the Seacare scheme who suffer a catastrophic injury at work. They would be entitled to lifetime, uncapped attendant care and household services through the NIIS and NDIS. These services are subject to caps of \$251.94 each per week under the current Seafarers Act.

The aggregate benefit for employees is expected to be limited. Compensation for attendant care and household services is currently estimated to be only 0.1 per cent of compensation paid under the Seacare scheme, which equates to around \$0.015 million per year. It is not clear how much this would be expected to increase (which would represent benefits to employees) following the

introduction of the NIIS, since this would depend on whether the care provided to current recipients is adequate to meet their needs.

4.3.4. Cost Recovery Levy and Fees

The introduction of a cost recovery levy would represent a cost for employers. This cost would be a new cost, since Seacare scheme employers do not currently contribute to the cost of the Seacare scheme's administration and regulation (they pay a levy to maintain the Safety Net Fund).

The impact of the cost recovery levy would depend on if and when the Government chooses to charge the levy and what rate the levy is set at. If set too high, there is some risk that the increase in costs for Seacare employers could reduce their competitiveness, potentially decreasing the number of employers and vessels in the Seacare scheme and reducing employment opportunities in the Australian maritime industry.

The Government will consult with Seacare scheme employers to fully understand the impact of any proposed levy prior to implementing it. If the Government chooses to impose a levy, the Government could assist Seacare employers to manage the cost impact by phasing the levy in over a number of years. The levy would not fully cost recover the costs of administering and regulating the Seacare scheme while it is being phased in.

It is proposed that the Seafarers Insurance Levy and cost recovery levy, when charged, would be calculated and collected in the same way as the existing Safety Net Fund levy (calculated per seafarer berth on the first day of a quarter). This would ensure there is no additional regulatory burden on employers from changes to the Levy Act and Levy Collection Act to introduce a mechanism for charging a cost recovery levy (once the Government decides to charge it).

The impact of cost recovery fees on employers is expected to be around **\$0.060 million per year** (in total across the Seacare scheme).

4.3.5. Governance

The transfer of the Seacare Authority's functions to the SRCC and Comcare is estimated to result in savings of approximately \$10,000 for the Government as a result of no longer paying the Chairperson's daily sitting rate or travel costs of Seacare Authority members. The Advisory Group will not have any costs since members will not be remunerated.

This change is not expected to have any impact on Seacare employers or employees.

5. Regulatory Costs

In accordance with Australian Government policy, the cost burden of new national regulation, whether arising from new regulations or changes to existing regulation, must be quantified using its Regulatory Burden Measurement framework.

5.1. Option 2 – Abolishing the Seacare scheme

The repeal of the Seafarers Act, Levy Act and Levy Collection Act would result in regulatory savings for employers from not having to purchase a workers' compensation insurance policy. Averaged over ten years, it is estimated that this benefit for employers would be around **\$26.8 million per year** (\$812,000 per employer for the 33 current Seacare scheme employers).

The repeal of the OHS(MI) Act would also result in regulatory savings for employers. However, no estimate of this saving is provided for this RIS. Calculating this saving would require estimating the total regulatory cost for Seacare employers of protecting the health and safety of their employees, including the activities outlined above. It is also complicated by the fact that in the absence of the OHS(MI) Act and without any other work health and safety coverage, Seacare employers would still owe a common law duty of care to their employees. To satisfy this duty, employers would likely continue to undertake a number of measures to protect the health and safety of their employees. Seacare employers may also be required under other instruments, such as enterprise agreements, to consult with their employees on work-related matters, such as health and safety.

Table 19: Regulatory Burden and Cost Offset Estimate Table – Option 2

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	-\$26.8	N/A	N/A	-\$26.8

As per Australian Government policy, the regulatory costs of complying with state or territory government regulation are not considered in the estimates and discussion above. The estimates above reflect the regulatory cost of complying with Seacare workers' compensation and work health and safety legislation.

The actual regulatory saving of this option is likely to be significantly less than outlined above, and there may not be any actual regulatory saving, since Seacare scheme employers would have to comply with state or territory government workers' compensation and work health and safety legislation. State and territory legislation workers' compensation and work health and safety legislation imposes similar regulatory requirements to the Seacare scheme. Depending on arrangements developed for winding down the Seacare scheme, it is also possible that former Seacare scheme employers may have to simultaneously manage long-tail claims made under the Seacare scheme prior to the repeal of the Seafarers Act, which would also result in ongoing regulatory costs for former Seacare employers.

Employers would likely incur one-off regulatory costs from transitioning to a state or territory workers' compensation and work health and safety scheme, such as building an understanding of new legislative requirements and processes and obtaining a workers' compensation insurance provider. These are estimated to be approximately \$50,000 in total across the Seacare scheme.

5.2. Option 3 – Reform of the Seacare scheme

5.2.1. Benefits

There would be minor benefits for employers from clarifying the coverage of the Seacare scheme, since it would be simpler for them to determine coverage of a vessel, which will reduce the time it takes to determine whether an injured employee was covered by the Seacare scheme at the time of their injury. Averaged over a ten year period, it is estimated that clarifying the coverage of the Seacare scheme would result in regulatory savings for Seacare scheme employers of approximately **\$0.005 million per year** across the Seacare scheme.

5.2.2. Costs

The Department engaged PwC to collect and analyse data on the benefits and costs of aligning the OHS(MI) Act with the WHS laws through interviews with businesses and industry representatives. An analysis of the key differences between the OHS(MI) Act and the WHS Act was undertaken. The differences were then further split into those that were deemed by PwC to have a significant impact on costs and those that would likely have no significant impact. Consideration of the significance of differences was informed by the findings of the Stewart-Crompton Review and consultations with stakeholders.

Stakeholders indicated there would be one-off and ongoing costs incurred as a result of the proposed changes.

The one-off costs were:

- training for staff to help them understand the changes, and
- licence costs for certain classes of high-risk work (existing staff).

The ongoing costs were:

- licence costs for certain classes of high risk work (for new staff).

Officers

Stakeholders expected to incur one-off costs associated with training of ‘officers’ in relation to their due diligence responsibilities under the WHS Act. It is estimated that this would consist of around one day of training, for an average of 10 officers per organisation. Costs would include course costs, staff time and food, as well as travel and accommodation for half of the participants.

The one-off cost to employers of additional training for officers is estimated to be around **\$528,000** across the Seacare scheme (\$16,000 per employer).

All other seafarers (workers)

Stakeholders expected to incur one-off costs associated with bringing all seafarers up to speed with their new responsibilities under the WHS Act. It is estimated this would consist of updating online training modules, and providing verbal communication and written material. On average, it was estimated to take around half an hour per worker.

The one-off cost to employers of training existing seafarers on the new WHS laws is estimated to be around **\$334,000** across the Seacare scheme (\$10,000 per employer).

High risk work licensing

The WHS Regulations require certain work, or classes of work, to be carried out only by or on behalf of a person who is licensed. Since the OHS(MI)(NS) Regulations do not currently require any class of work to be carried out by a person who is licensed, it is not proposed that high risk work licensing be introduced immediately for the Seacare scheme. Instead, further discussions on the application of these regulations would be held with Seacare scheme employers and employees with a view to phasing in high risk work licensing after two years.

Stakeholders were of the view that individuals required to perform high risk work would already have completed the relevant training. As many seafarers work across jurisdictions with different safety requirements, employers in many cases have required seafarers to be trained to satisfy the highest possible standards that could be encountered.

While seafarers may have already undertaken the relevant training to perform high risk work, some seafarers may not possess the licence associated with the training. One business indicated that approximately 50 per cent of its seafarers would undertake high risk work in the applicable classes and potentially require a licence.

Assuming that current employees performing high risk work do not require further training to obtain a licence, the one-off cost to current employees of obtaining licences is estimated to be **\$79,000** across the Seacare scheme when high risk work licensing is introduced. The ongoing cost of obtaining licences from that time for new employees is estimated to be **\$8,000** per year.

In total, averaged over a ten year period, it is estimated that regulatory costs arising from abolishing the OHS(MI) Act and extending the coverage of the WHS Act to the Seacare scheme would be approximately **\$0.100 million per year**. These include costs of **\$0.086 million per year** for employers (around \$0.003 million per employer) from providing training on the WHS Act and **\$0.014 million per year** for employees from obtaining high risk work licences required under the regulations.

5.2.3. Net Regulatory Costs

Reform of the Seacare scheme has an estimated regulatory cost of **\$0.095 million per year**, averaged over ten years. This includes regulatory costs of **\$0.081 million per year** for employers (\$0.003 million per employer) and **\$0.014 million per year** for employees. There are no regulatory costs for community organisations.

Table 20: Regulatory Burden and Cost Offset Estimate Table

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Individuals	Community Organisations	Total change in costs
Total, by sector	\$0.081	\$0.014	N/A	\$0.095

6. Conclusion and Recommendations

6.1. Option 1 – Status Quo

There are significant problems with the current Seacare scheme that make retaining the status quo not a feasible option.

The lack of clarity over the coverage of the Seacare scheme presents significant issues for Seacare employers and employees and other maritime industry participants that are only likely to get worse over time as the maritime industry continues to evolve.

It is assumed that the Seacare Authority exemptions and declarations made by the Minister in response to the Federal Court's Aucote decision, which significantly expanded the coverage of the Seacare scheme, would be renewed to continue to limit the coverage of the Seacare scheme. However, if this were not the case and the Federal Court's expansive interpretation of the coverage applied, this would have a massive cost impact for maritime industry employers previously covered by state workers' compensation Seacare scheme, who would have to obtain insurance under the more expensive Seacare scheme, and the Government, which would be required to regulate the significantly larger Seacare scheme.

The work health and safety performance of the Seacare scheme is below that of other jurisdictions and other high risk industries. The Seacare work health and safety laws, provided in the OHS(MI) Act, are outdated and not aligned with contemporary work health and safety law and practice. With no change to the OHS(MI) Act, it is not expected that there would be any significant improvements in work health and safety performance in the Seacare scheme the near future, although current trends of improving performance may continue.

Changes to the age of eligibility for the age pension are scheduled to come into effect from 1 July 2017. The NIIS is also expected to be implemented in the near future. With no changes to the Seafarers Act, there will be a gap between when injured employees cease being eligible for compensation under the Seafarers Act and when they become eligible to receive the age pension. The Seacare scheme would also likely be inconsistent with the minimum benchmarks of the NIIS, once agreed.

The Seacare Authority, Comcare and AMSA are not adequately funded to effectively administer and regulate the Seacare scheme. With no change to existing arrangements, this issue will continue.

Given the urgent need to provide certainty to stakeholders over the coverage of the Seacare scheme following the Federal Court's Aucote decision and ensure alignment with the age of eligibility for the age pension and minimum benchmarks of the NIIS, as well as the clear need to update the Seacare scheme's work health and safety laws, retaining the status quo is not preferred. All stakeholders agree that reform of the Seacare scheme is necessary and overdue.

6.2. Option 2 – Abolish the Seacare Scheme

The small size of the Seacare scheme also suggests that maintenance of a separate workers' compensation and work health and safety Seacare scheme may be unwarranted.

In 2004 the Productivity Commission noted that it sees little justification for maintaining industry-specific workers' compensation schemes where workers in one industry are subject to substantially different arrangements compared with other workers in the same state.⁷

Since workers' compensation insurance under the Seacare scheme is expensive compared to state and territory workers' compensation schemes, industry representatives support abolishing the Seacare scheme.

It is estimated that Seacare employers would obtain a regulatory saving of \$26.8 million per year as a result of not having to obtain a policy of insurance under the Seacare scheme. However, this does not reflect the full regulatory costs of this option. Employers would incur costs from obtaining workers' compensation insurance under state and territory workers' compensation schemes. Workers' compensation costs are generally cheaper in state and territory schemes compared to the Seacare scheme. However, employers would also incur transition costs and it may also be necessary for employers to continue to manage long-tail liabilities from the Seacare scheme, resulting in additional costs. These costs may erode much of the regulatory saving outlined above.

While it is difficult to compare compensation entitlements across jurisdictions, the Seacare scheme is relatively generous compared to state and territory schemes. Some employees may experience a reduction in workers' compensation benefits under state and territory workers' compensation schemes, compared to what they would have received under the Seacare scheme. Because of the potential costs for employees, union stakeholders are strongly opposed to abolishing the Seacare scheme.

Improvements in work health and safety outcomes and reductions in workers' compensation costs for employers could be achieved by abolishing the legislation that establishes the Seacare scheme and moving Seacare employers and employees into state or territory workers' compensation and work health and safety schemes. Employers and employees would benefit from improved safety outcomes by transitioning from the OHS(MI) Act to state and territory work health and safety legislation based on the model WHS laws. Since the Commonwealth WHS Act is also based on the model WHS laws, this benefit is equivalent to the benefit that would be expected from improved safety outcomes in option 3.

While this option could potentially have some cost saving for the Government, implementing it would require extensive consultation and negotiation with Seacare employers and employees, insurers and state and territory governments. Arrangements for managing long tail Seacare claims, including claims against the Safety Net Fund (where there is no longer an employer to claim against), would need to be considered. Stakeholders would face continued uncertainty over the coverage of the Seacare scheme while arrangements to abolish the Seacare scheme are developed. Urgent issues such as the potential gap in eligibility for the age pension and the implementation of the NIIS would also go unaddressed.

This option is also not preferred. Actual regulatory benefits, once costs of transitioning to state and territory workers' compensation schemes are considered, are uncertain. Due to the long-tail nature

⁷ *National Workers' Compensation and Occupation Health and Safety Frameworks*, Productivity Commission, 24 June 2004, p.327

of the Seacare scheme, it would need to remain in operation for a number of years. While benefits from improved safety outcomes would be expected, these would be equivalent to those expected from option 3. This option would take time to implement and issues requiring urgent action would not be addressed in the meantime. Certain stakeholders are also strongly opposed to this option.

6.3. Option 3 – Reform of the Seacare Scheme

This option would provide much needed certainty to maritime industry employers and employees over the coverage of the Seacare scheme. It would provide clear coverage rules that operate consistently to minimise jurisdictional uncertainty and enable maritime industry employers and employees to easily determine if they are covered by the Seacare scheme.

The OHS(MI) Act is significantly out of date and has a number of deficiencies compared to the WHS Act. The OHS(MI) Act has more specific application and its objects are more operationally directed than aimed at continuously improving safety. Its definitions and duties of care have narrower scope. Penalties for breaching work health and safety legislation are much lower in the OHS(MI) Act.

Retaining industry-specific work health and safety legislation for the Seacare scheme is unnecessary. Expanding the scope of the Commonwealth WHS Act to include the Seacare scheme would align the Seacare scheme's work health and safety arrangements with the model WHS laws that have been adopted in all states and territories (except Victoria, which has legislation similar to the model WHS laws, and Western Australia, which is moving to adopt substantial amounts of the model WHS laws). The duties and requirements of the WHS Act are broad based and capable of applying to a range of industries. The Seacare scheme is not significantly different from other industries which fall under Commonwealth, state or territory work health and safety legislation based on the model WHS laws.

Expanding the scope of the WHS Act to include the Seacare scheme is expected to have some minor regulatory costs for employers and employees, which are mostly upfront costs related to training on the WHS Act and obtaining high risk work licences. However, it is expected to provide significant ongoing benefits to employers, employees and the broader community by improving safety outcomes. Unions and Seacare employers support adopting the WHS Act for the Seacare scheme.

This option would make generally minor amendments to the Seafarers Act to ensure consistency with the SRC Act, upon which it was originally based. However, one of the amendments would align the age at which injured employees cease to be eligible for workers' compensation with the age of eligibility for the age pension in the Social Security Act. This would ensure there is no gap between eligibility for workers' compensation and the age pension when changes to the age of eligibility for the age pension commence. Another amendment would ensure allow for the introduction of the NIS by enabling caps on attendant care and household services to be removed for employees with a catastrophic injury. These amendments are urgently required to align the Seacare scheme with recent policy decisions of the Government affecting the Seacare scheme.

This option would provide for more efficient and effective governance of the Seacare scheme by transferring the Seacare Authority's functions to the SRCC, Comcare and AMSA. The ability of the Chairperson of the SRCC to establish an Advisory Group will ensure that industry continues to have input on the operation of the Seacare scheme. This option would also introduce a mechanism to charge a cost recovery levy on Seacare employers that would enable the Government to recover the SRCC, Comcare and AMSA's costs of administering and regulating the Seacare scheme. Cost recovery

would ensure that the SRCC, Comcare and AMSA have sufficient financial resources to perform their administrative and regulatory functions for the Seacare scheme.

Reform of the Seacare scheme the recommended option. It addresses the most urgent problems with the current Seacare scheme with only a minimal regulatory cost on Seacare scheme employers and employees, who are expected to benefit significantly over time from improved work health and safety outcomes.

7. Consultation

Seacare reform has been the subject of extensive consultation with stakeholders over a number of years.

7.1. Reviews and Reform Discussions

7.1.1. *EY and Stewart-Crompton Reviews*

The EY Review and Stewart-Crompton Review included consultation with stakeholders.

The Stewart-Crompton Review was conducted over six months from October 2012 to March 2013. In November and December 2012, thirteen meetings were held across Australia with a number of stakeholders, including industry representatives and employers, maritime unions, government agencies and insurers. A discussion paper was also released publicly for comment, with 13 submissions from this stakeholder group. Following the release of the review report, the Department held further consultations with these stakeholders to discuss the recommendations.

The EY Review was conducted over a short period of time in April and May 2005, with reviewers having three weeks to consider submissions, conduct stakeholder consultations, formulate recommendations and complete the report. Meetings were held with relevant Commonwealth government agencies, state workers' compensation authorities, industry representatives, maritime unions, law firms and insurers. A total of 16 organisations were consulted. One hundred and seventy seven written submissions were received. Over 160 of these were common letters signed by individual seafarers.

7.1.2. *Consultation on Seacare Reforms*

More recently, the Department held five one-day workshop consultations with stakeholders between May and August 2015 to discuss possible reforms to the Seacare scheme. Workshops were held on coverage, governance, work health and safety and workers' compensation arrangements, with two workshops held to discuss coverage given the complexity of the matter. These consultations included industry representatives and employers, maritime unions and relevant Commonwealth government agencies (many of the attendees were Seacare Authority members or deputies). For each workshop consultation, the Department of Employment distributed a paper outlining issues raised in the Stewart-Crompton review and possible approaches to improve the Seacare scheme. Stakeholders were invited to comment on the proposed approaches and offer alternative proposals.

On 21 December 2015, the Department released a consultation RIS outlining proposed reforms to the Seacare scheme for public comment. The Department wrote to Seacare Authority members and key stakeholders who had been involved in the workshop consultations to inform them of its release and to ask that they make their members aware of its release. The Department also published advertisements in national and specialist media and social media alerts through January to alert the public to the release of the consultation RIS. The submission period ran for six weeks until 5 February 2016, although late submissions were accepted and considered.

Fifteen submissions in total were received from industry representatives and employers engaged in the Great Barrier Reef Tourism industry, insurance providers and maritime unions. During the submission period, the Department also held a meeting with industry representatives and insurers

to further discuss the proposed reforms. The Department attempted to arrange a similar meeting with maritime unions but received no response.

7.1.3. Legislation Previews

In March and April 2016, the Department held two closed previews of draft Seacare reform legislation with representatives of organisations represented on the Seacare Authority (and their deputies), including industry representatives, employers and maritime unions. The purpose of the previews was for stakeholders to review the technical detail of the legislation to ensure there were no unintended consequences and comment on the policy positions proposed.

At the first meeting, stakeholders were asked to review and provide feedback on the draft legislation over one day. Following stakeholder concerns that there was not sufficient time to adequately review the draft legislation, a second meeting was organised that was held over two days, with stakeholders reviewing the draft legislation on the first day and providing feedback on the second.

7.2. Stakeholder Views on Options

Information on stakeholder views on each of the reform proposals and how proposals were developed in response to stakeholder feedback is provided below.

7.2.1. Option 1 – Status Quo

Stakeholder views on the need for reform of the Seacare scheme have developed since the EY Review. During the EY Review, industry representatives (generally) and unions supported the Seacare scheme, although both identified areas for improvement of the Seacare scheme such as clarifying the coverage of the Seacare scheme, providing greater access to redemptions and increasing funding for Seacare scheme administrators and regulators.

During the Stewart-Crompton Review, stakeholders identified the same issues raised in the EY Review and more areas for improvement of the Seacare scheme. While many stakeholders were supportive of the Seacare scheme, all suggested improvements. The Stewart-Crompton Review's 68 recommendations for improvements to the Seacare scheme demonstrated a consensus among stakeholders for the need for reform of the Seacare scheme, although there was not agreement among stakeholders on the nature of the required reforms.

Following the Federal Court's Aucote decision, industry representatives highlighted an urgent need for reform of the Seacare scheme to clarify the coverage of the Seacare scheme. During the recent consultations held by the Department, all stakeholders agreed on the need for reforms of the Seacare scheme to clarify its coverage, modernise its work health and safety legislation and improve the governance of the Seacare scheme. No stakeholder argued that the Seacare scheme should be retained in its current form without modification.

Based on all consultation that has taken place, there is clear consensus from industry representatives and maritime unions that maintaining the status quo is not a feasible option and reform of the Seacare scheme is necessary.

7.2.2. Option 2 – Abolish the Seacare scheme

During the EY Review, a small number of industry representatives and insurers supported abolishing the Seacare scheme. The EY Review proposed abolishing the Seacare scheme as one of two options to modernise workers' compensation and work health and safety regulation for Seacare scheme

employers and employees, with the other option being reform of the Seacare scheme. No stakeholder proposed abolishing the Seacare scheme during the Stewart-Crompton Review, although this option was outside the review's terms of reference.

During recent consultations held by the Department, industry representatives raised concerns about the high cost of workers' compensation insurance under the Seacare scheme compared to state and territory workers' compensation schemes. They consider that there is no need for a separate workers' compensation and work health and safety scheme for this defined part of the maritime industry. The Seacare scheme is unusual being an industry-specific workers' compensation scheme.

Industry representatives support abolishing the Seacare scheme and transferring Seacare employers and employees to state and territory workers' compensation and work health and safety schemes. An insurer stakeholder also expressed support for this option. Industry representatives acknowledged some complexity with abolishing the Seacare scheme, but did not regard this complexity as insurmountable. Seacare scheme employers would likely achieve some cost savings from this option.

Maritime unions, however, expressed strong opposition to this option. They consider it would result in a reduction in workers' compensation entitlements for employees. While it is difficult to compare benefits between workers' compensation schemes, some employees may experience a reduction in workers' compensation entitlements if transferred to state and territory workers' compensation schemes. Rather than abolishing the Seacare scheme, unions consider that the Seacare scheme should be expanded to cover a greater proportion of the Australian maritime industry.

Option 2 in this RIS would give effect abolishing the Seacare scheme. Based on all consultation that has taken place, there is support for this option, although it is limited to industry representatives. This option is strongly opposed by unions.

7.2.3. Option 3 – Reform of the Seacare Scheme

7.2.3.1 Coverage

The lack of clarity over coverage of the Seacare scheme has been raised as a key issue by stakeholders in both the EY Review and Stewart-Crompton Review of the Seacare scheme and in recent consultations undertaken by the Department.

During the EY Review and Stewart-Crompton Review, stakeholders raised a number of concerns over the clarity of coverage of the Seacare scheme and suggested a number of different approaches to resolve these issues. Maritime unions submitted proposals that would expand the coverage of the Seacare scheme to a greater proportion of the Australian maritime industry.

Based on stakeholder views, the EY Review suggested removing the Seafarers Act and OHS(MI) Act links with the Navigation Act for determining coverage. An alternative approach to defining coverage based on the tonnage of a vessel was also suggested. The Stewart-Crompton Review also recommended removing links to the Navigation Act. It further recommended not reducing the coverage of the Seacare scheme, allowing employers to opt in to the Seacare scheme and allowing vessels to seek an exemption from coverage by the OHS(MI) Act as well as the Seafarers Act.

For workshop consultations on coverage, the Department provided stakeholders with a number of options for clarifying the coverage of the Seacare scheme. One option involved reform of the existing coverage, where links to the Navigation Act were removed, the voyage-based test was

modified to provide greater consistency of coverage and a mechanism for employers to opt in to coverage was included. Other options, including a seafarer berth or tonnage-based definition, were proposed.

During discussions, industry representatives would not support a new test of coverage that would result in more vessels being covered by the Seacare scheme. On the other hand, maritime unions continued to support an expanded coverage of the Seacare scheme and would not support a new test that would result in fewer vessels being covered.

Both industry representatives and maritime unions expressed support for developing a substantially new model of coverage of the Seacare scheme. However, the Department was not able to develop a model that totally satisfied both industry representatives and maritime unions, with both expressing concerns about the potential impact of new models of coverage on the number of vessels covered by the Seacare scheme.

The proposed new coverage test represents reform of the existing coverage test, as outlined above. Consistent with the views of industry representatives and maritime unions, it clarifies the coverage of the Seacare scheme while maintaining the scope of coverage that applied prior to the Federal Court's Aucote decision (and applies now as a result of actions taken to limit the coverage of the Seacare scheme following that decision). Following the consultation RIS, the proposed coverage test was refined in response to submissions from employers operating in the marine park tourism industry to ensure that they would not be inadvertently covered.

7.2.3.2 Work Health and Safety

The EY Review did not consider the OHS(MI) Act in detail. However, since the Stewart-Crompton Review followed the implementation of the model WHS laws, a number of stakeholders commented on Seacare work health and safety arrangements. Industry representatives expressed differing views on the model WHS laws, with one open to adopting the laws for the Seacare scheme but seeking further analysis, while another opposed their adoption for the Seacare scheme. Maritime unions expressed support for adopting the model WHS laws for the Seacare scheme. However, both industry representatives and maritime unions expressed support for retaining separate work health and safety legislation for the Seacare scheme.

The Stewart-Crompton Review recommended largely adopting the model WHS laws for the Seacare scheme, but through separate legislation. It also recommended a transition period for Seacare participants to make preparations to adopt the model WHS laws.

The Department considers there is no compelling reason to retain separate work health and safety legislation for the maritime industry. The WHS Act, which adopts the model WHS laws, has broad based duties that are capable of applying to the maritime industry.

During consultations held by the Department, industry representatives and maritime union expressed general support for expanding the coverage of the WHS Act to include the Seacare scheme. Some concerns were raised about the application of specific provisions, including union right of entry and HSR training, but the Department did not consider it necessary to modify the application of these provisions for the Seacare scheme as this sector of the maritime industry is not so different to warrant special provisions. Given that the WHS Regulations include a number of matters that are not included in the OHS(MI)(NS) Regulations, they will not be applied immediately and further consultations will be undertaken on their application.

7.2.3.3 Workers' Compensation

During the EY Review, it was noted that the Seacare workers' compensation scheme had not kept pace with reforms to improve state and territory workers' compensation schemes. Issues were raised with the cost of workers' compensation insurance, high excesses and limited access to redemptions. These issues were also raised during the Stewart-Crompton Review.

During the Stewart-Crompton Review, stakeholders generally supported the need for consistency between the Seafarers Act and the SRC Act. However, industry representatives and insurers did not support alignment of provisions that would increase access to compensation (or benefits) for workers, while unions did not support alignment that would limit access to compensation.

The Stewart-Crompton Review made a number of recommendations to improve consistency between the Seafarers Act and the SRC Act. It also made recommendations to adopt a number of recommendations from the Hanks Review of the SRC Act, which were designed to address industry concerns about the high cost of insurance premiums by improving return to work outcomes.

During workshop consultations held by the Department, industry representatives expressed support for broad changes to Seacare workers' compensation arrangements that could reduce workers' compensation insurance costs for employers. Maritime unions, on the other hand, expressed strong opposition to any change to workers' compensation arrangements that they considered would result in a reduction in entitlements for employees.

Following the release of the consultation RIS, industry representatives supported abolishing the Seacare scheme rather than reforming its workers' compensation arrangements. Both industry representatives and maritime unions expressed a strong preference for the Seafarers Act to not be significantly reformed prior to any reform of the SRC Act (upon which it was originally based), noting that the Hanks Review recommendations have not yet been adopted for the SRC Act.

The proposed reforms of Seacare workers' compensation arrangements are consistent with the preference of stakeholders that the Seafarers Act generally align with the SRC Act but not be significantly reformed prior to any reform of the SRC Act. The changes therefore include necessary updates and clarifications to the Seafarers Act to align it with past amendments to the SRC Act. Where the Seafarers Act is to be amended to accommodate changes to the age of eligibility for the age pension and the implementation of the NIIS, it is proposed that corresponding amendments are made to the SRC Act at the same time.

7.2.3.4 Cost Recovery Levy and Fees

Both the EY Review and Stewart-Crompton Review raised concerns over funding for the administration and regulation of the Seacare scheme. The EY Review recommended increasing the funding and resources of the Seacare Authority. During the Stewart-Crompton Review, stakeholders questioned how effective the Seacare Authority could be with its limited funding. An industry representative raised concerns over the ability of AMSA to perform its work health and safety inspectorate functions with its limited funding. Maritime unions submitted proposals for greater funding and resources for the Seacare Authority.

For the workshop consultation to discuss funding of the Seacare scheme, the Department provided a proposal to introduce a cost recovery levy. There was general agreement from industry representatives and maritime unions that the agencies responsible for administering and regulating the Seacare scheme are not adequately funded to perform their functions. However, stakeholders

expressed reservations about a cost recovery levy and fees, with industry representatives noting the high costs of workers' compensation insurance under the Seacare scheme and claiming that such a levy and fees would place an additional financial burden on employers. Since Seacare employers do not currently make any financial contribution to the administration and regulation of the Seacare scheme, the introduction of a cost recovery levy would inherently increase costs for Seacare employers. While not specifically supporting or opposing the introduction of a cost recovery levy, unions suggested that the Government could provide more funding to the Seacare scheme.

To address the concerns of industry representatives, the reform option introduces a mechanism for cost recovery, but the cost recovery levy will initially be set at \$0. Further consultations will be held with Seacare stakeholders prior to any levy rate being set. It would be a matter for Government in the future to determine if a levy rate should be set and at what level. The levy could be phased in to minimise the impact on Seacare employers.

7.2.3.5 Governance

The EY Review examined the governance arrangements of the Seacare scheme. It found that the Seacare Authority's structure appeared appropriate, but recommended that it be provided with additional powers and funding to be a more effective regulator. During the Stewart-Crompton Review, maritime unions expressed support for the retention of the Seacare Authority. Both industry representatives and maritime unions also expressed support for AMSA retaining its role as the work health and safety inspectorate for the Seacare scheme. The Stewart-Crompton Review recommended retaining the Seacare Authority, but amending the functions of the Authority and AMSA to provide greater clarity about their responsibilities.

On 15 December 2014, the Government announced a decision to transfer the functions of the Seacare Authority to the SRCC. The Department later considered that it would not be appropriate to transfer functions to the SRCC that are performed by Comcare for the Comcare scheme.

For the workshop consultation on governance, the Department provided stakeholders with a proposal to transfer the functions of the Seacare Authority to the SRCC, Comcare and AMSA, with each having clearly defined functions. The SRCC's current membership includes union representatives and representatives of employers in the Comcare scheme. It was proposed that the SRCC membership would not be expanded to include maritime industry or union representatives given the size of the Seacare scheme and existing presence of union representation.

Industry representatives supported transferring the Seacare Authority's functions to another body, while maritime unions supported retaining the Seacare Authority. However, during workshop consultations, in submissions following the release of the consultation RIS and during the first legislation preview, both industry representatives and maritime unions raised concerns over the proposal to not include maritime industry representation in the SRCC membership. They sought direct representation for maritime industry and union representatives on the SRCC to ensure industry input into decision-making affecting the Seacare scheme.

To address the concerns of industry representatives and maritime unions and provide industry with input into decision-making affecting the Seacare scheme, the reform option has been amended to include a power for the Chairperson of the SRCC be able to establish an Advisory Group comprising members from maritime industry representatives and unions to advise the SRCC and Comcare on Seacare related matters.

8. Implementation and review

Subject to the passage of legislation, the amendments to give effect to the recommended option will generally commence from 1 July 2017, with some exceptions.

Amendments to clarify the coverage of the Seacare scheme, align the age at which an injured employee ceases to be eligible for workers' compensation payments under the Seafarers Act with the age of eligibility for the age pension in the Social Security Act and facilitate the implementation of the NIIS will commence immediately.

The cost recovery levy will initially be set at \$0. It will be a matter for Comcare and AMSA to consult with Seacare employers and unions over cost recovery for the Seacare scheme and seek the Minister's approval to charge a cost recovery levy. Consistent with the Australian Government's Charging Framework and Cost Recovery Guidelines, the levy would not be charged until Comcare and AMSA have prepared a Cost Recovery Implementation Statement and the new levy has been put in place under a new regulation.

Only WHS Regulations and approved Codes of Practice that have broad application or are similar to those that apply currently will be applied from 1 July 2017. The Department will engage in further consultations with Seacare stakeholders over the next two years to discuss the phasing in of the WHS Regulations and Codes of Practice, with a view to them commencing from 1 July 2019.

With Seacare work health and safety arrangements moving within the scope of the WHS Act, work health and safety issues affecting the Seacare scheme will be considered as part of any future review of the model WHS laws on which the WHS Act is based.

Attachment A

The Department of Employment (the Department) engaged PricewaterhouseCoopers (PwC) to conduct a cost-benefit analysis of the proposed changes to the Seacare scheme. PwC held limited consultations with a small number of Seacare scheme industry representatives and employers and used data held by Comcare to estimate the benefits and regulatory costs of the proposed changes. The costings presented in this Regulation Impact Statement (RIS) have been developed from the cost-benefit analysis prepared by PwC. Further information on the analysis methodology is provided below.

Work Health and Safety Analysis Methodology

The table below provides a summary of the assumptions used by PwC in calculating the work health and safety impacts.

The following sections describe the respective approaches applied in estimating the impacts associated with each key change expected to occur through alignment of the OHS(MI) Act and associated Regulations with the Commonwealth WHS Act and Regulations.

Assumptions used in estimating work health and safety impacts

Assumption	Unit	Value	Source
Average hourly wage – all workers	\$ per hour	84	Based on a sample of Enterprise Bargaining Agreements (EBAs) across offshore, bluewater and dredging. A weighted average was calculated using seafarers per sub-sector and assuming that the mix between senior and junior crew was a mix of around 50:50. Salaries were converted into an hourly rate using the following assumptions: - 27 weeks worked per year - 70 hours worked per week (10 hours per day for 7 days a week).
Individuals' hourly rate of leisure time	\$ per hour	29	Standard OBPR estimate
Number of employers under the Seacare scheme	Employers	33	Seacare Annual Report 2014-15
Number of employees covered under the Seacare scheme	Employees	6,863	Seacare Annual Report 2014-15
Seacare claims amount per annum	\$millions annually	15	PwC analysis of Seacare data
Ratio of direct to indirect costs of claims	Ratio	1:4	Regulatory Impact Statement - Technical appendix to the RIS (Proposed Occupational Health and Safety Regulations 2007 and Proposed Equipment (Public Safety) Regulations 2007)

Assumption	Unit	Value	Source
On-costs	%	16.0%	Assumption.
Overheads	n/a	n/a	Given the nature and size of the changes, we do not anticipate that additional costs for overheads (e.g. HR, IT, finance etc.) would likely increase. Therefore no amount for overheads has been included in the estimates.

Assessment of Cost Impacts

Licensing for certain classes of high risk work

The WHS Act and Regulations require certain work, or classes of work, to be carried out only by or on behalf of a person who is authorised.

It is estimated around 50 per cent of workers in the offshore sector would require a licence, and only half of this (25 per cent) in other sectors.

Desktop research and business comments suggested that licence costs per affected employee could range between \$67 and \$84.

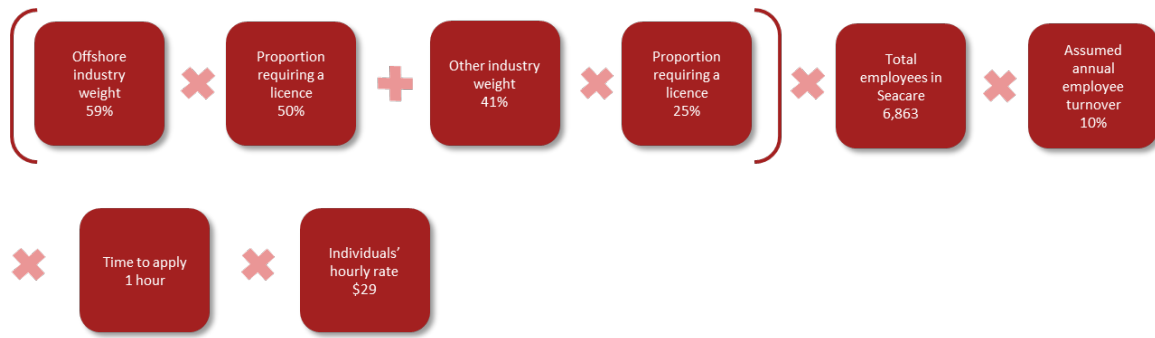
The additional licensing requirements will impose costs on those currently working in the industry (one-off costs), as well as new entrants to the industry (ongoing costs).

The approach used to estimate the cost for applying for the licences is outlined in Figures 1 and 2 below.

Figure 1: Approach to estimation of costs associated with changes to authorisation (Employee one-off costs to apply for licence)



Figure 2: Approach to estimation of costs associated with changes to authorisation (Employee ongoing costs to apply for licence)



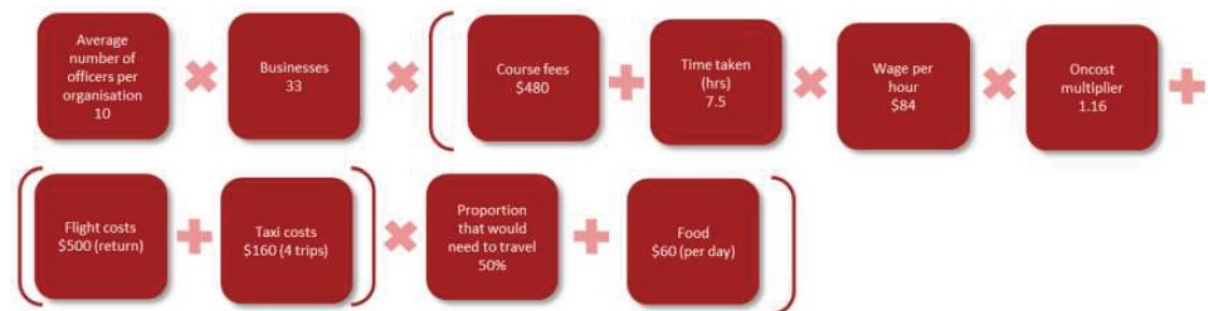
Specific assumptions and modelling inputs

Assumption	Value	Units	Source and comments
Proportion of the workforce requiring high-risk work licences (offshore)	50	% of workers	Industry consultation
Proportion of the workforce requiring high-risk work licences (other sectors)	25	% of workers	Industry consultation
Time to apply for licence	1	hour	Assumption

Training of ‘officers’

The WHS Act imposes a duty on ‘officers’ to exercise due diligence to ensure that the PCBU complies with their WHS duties. It is assumed this would be one day of training.

Figure 3: Approach to estimate costs of additional training of officers



Specific assumptions and modelling inputs

Assumption	Value	Units	Source and comments
Average number of officers per organisation	10	persons	Average figure of information provided during consultation
Course fees	480	\$	Proportion of 5 day course fee.

Assumption	Value	Units	Source and comments
Time taken	7.5	hours	Assumption informed by consultation and online information.
Airfare costs per-individual for attending training	500	\$ per return flight	Industry consultation
Meal costs per-individual while attending training	60	\$ per day	Industry consultation
Taxi costs for trips to/from airports to attend training	40	\$ per trip	Industry consultation

Cost of training other employees

It was also estimated that all other employees would also need to be updated on the changes, however this would be undertaken as either online training, a verbal information presentation or provided as written material. It is estimated on average that this would take around 30 minutes of time for each employee.

Figure 4: Approach to estimate costs of additional training of other employees



Specific assumptions and modelling inputs

Assumption	Value	Units	Source and comments
Time taken	0.5	Hours	Average figure of information provided during consultation

Assessment of Benefit Impacts

Increased safety benefits

The estimated safety benefits are more difficult to quantify due to the mixed views of consultation participants, range of circumstances that often lead to safety incidents, and range of different businesses that operate under the Seacare scheme.

Most participants believed that there would be at least some safety benefits as a result of the alignment, due to increased breadth of compliance tools and/or an increase in personal responsibility due to specific duties imposed on them.

There was a view that range of enforcement mechanisms under the WHS Act would result in behavioural change. It was expected that this behavioural change would result in further improved safety outcomes under alignment.

The expected reduction in workplace injuries resulting from alignment with model WHS laws would be at least 1.4 per cent.⁸

This estimate is used in this analysis as the lower-bound estimate of reduced workplace safety incidents from Seacare scheme alignment. The upper bound used is 5.0 per cent, based on the lower estimate provided by the stakeholder comments above.

Figure 5: Approach used to estimate benefit impacts



Were this impact to occur it would result in significant ongoing benefits in the form of improved safety outcomes for Seacare scheme participants.

Workers' Compensation Analysis Methodology

Based on the cost impact assessments above we have considered the overall cost impact on the Seafarers scheme. The results are presented in terms of the potential cost impact for the 2014-15 financial accident year.

This uses a number of assumptions regarding claims experience, as follows (note these are unchanged from the 2015 report):

- Exposure: we have assumed the number of FTEs covered by the Seacare scheme is broadly equal to the average number covered in the previous 5 years (2010 – 2014).
- Frequency of claims: we have assumed that the number of claims incurred as a percentage of the number of FTEs covered by the scheme is slightly lower than the average of the previous five years (2010 – 2014). This gives some allowance for the reduction in claim frequency seen in recent years.
- Average cost per claim: based on an analysis of the average cost of compensation payments historically for both open and closed claims, we have assumed that the ultimate cost of compensation paid to a single claimant for an accident occurring in the 2015 financial year will be \$60,000.

Based on these assumptions, our assessment of the claims cost impact for 2014-15 is an increase of \$0.1 million. This is a distributional impact, rather than an overall impact to society.

⁸ Decision Regulation Impact Statement for a Model Occupational Health and Safety Act, Access Economics, December 2009.

Figure 6: Assessment of the claims cost impact

Description	Seafarers Act	Amended Seafarers Act	Movement	% change
Exposure (FTEs)	5000			
Claim Frequency	0.05			
Number of claims	250	249	-1	-0.4%
Average cost per claim	60,000	60,750	750	1.3%
Total compensation (\$m)	15.0	15.1	0.1	0.8%

Source: PwC analysis.

This overall impact arises from:

- A small reduction in frequency which is driven by the tightening of the eligibility criteria for which diseases are compensable. The quantum of this change is small as the nature of injuries covered by the Seacare scheme are predominantly physical injuries sustained on duty and these are unlikely to be removed by the proposed change.
- An increase in average claim size driven by the pension age change. Note that we have continued to assume the change in funeral benefits is not material.

This covers the change in cost of scheme claims only. It does not cover related expenditures such as below deductible claims costs, general claims management expenses (other than those recorded against individual claims) or other items that may be included in the employer's premiums.

Assumptions and Limitations

Coverage

The costs and benefits calculated assume that the existing coverage of the Seacare scheme will continue into the future.

Governance arrangements

The Seacare scheme workers' compensation will remain a separate, privately underwritten Seacare scheme.

The SRCC will replace the Seacare Authority from 2016-17 as per the Government's December 2014 announcement. There will be no significant changes to AMSA's role.

There are no changes to the Fund and levy.

Timing

The majority of the reforms are expected to commence 1 July 2017, with costs and benefits measured in 2015 prices.

Cost impacts

Costs and benefits are being assessed on the basis that the Government will near fully align the Seacare work health and safety legislation with the Commonwealth WHS Act.

Consultations

As the consultations were generally drawn from industries most likely to be impacted by the identified changes, certain treatments have been applied to ensure that the cost data obtained does not overstate the general impact.

Data

There is no obligation on an injured seafarer to lodge a Seacare Claim for Workers' Compensation form, so not every injury results in a claim. Also, it is possible employers do not advise all employee claims to the Seacare Authority or the employer's insurer. This is likely due to the high deductible amount that many businesses have arranged to ensure that insurance premiums are kept at an affordable level.