



4 August 2021

Comcare Attention: PI Review
Scheme Management
Group GPO Box 9905 Canberra ACT 2601

Dear Comcare

Re: Consultation on Comcare Permanent Impairment Guidelines

Maritime Industry Australia Limited is an industry peak body representing owners, operators and employers in the Australian maritime industry. MIAL's membership includes a significant number of employers who are covered (or are thought to be covered) by the Seacare scheme, comprising the *Seafarers Rehabilitation and Compensation Act 1992* (Seacare Act) and the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHSMI)

We recognise that a submission template was provided for the purposes of providing a comments based on the Comcare Permanent Impairment Guidelines, however some of the matters MIAL seeks to highlight do not lend itself to that pre determined structure.

The Seacare scheme covers employees working as seafarers on certain ships operating around Australia. According to the most recent Annual Report published on the Seacare Authority website, the scheme currently covers 3885 employees and 157 ships, making it Australia's smallest occupational health and safety and workers compensation scheme.¹ Presumably this is why there is no dedicated consultation about Guidelines under the Seacare Act. MIAL certainly considers this approach is consistent with its previous experience of consultation on supplementary instruments to the Seacare Scheme, where there is a failure by government to conduct a dedicated review on Seacare scheme instruments, instead seeking to rely on consultation on instruments that are designed for another scheme (usually the Comcare scheme).

Employees within the Comcare scheme are presumably employed in a range of roles, however we suspect the majority is made up of commonwealth public servants, notwithstanding the capacity for multi-national companies to ensure under the scheme. It is much smaller and covers a less diverse range of occupations than state and territory schemes. MIAL does understand that the Seacare Scheme was, when created, largely based on the Comcare scheme, presumably due to the capacity to cover employees in multiple jurisdictions. MIAL also understands that the Comcare scheme has been subject to some

¹ Seacare Authority Annual report 2019/20, pg 5.

reform since its inception, while the Seacare scheme has not undertaken any meaningful reform, despite numerous reviews into its operation.

The consultation documents highlights that the Guidance will not apply within the Military Compensation Scheme and that appropriate Guidance is the responsibility of the Military Rehabilitation and Compensation Commission.² If this is the case it is unclear why the Seacare scheme, as it remains a niche distinct scheme, does also not also warrant a dedicated consultation on the guidelines that are to apply.

While MIAL recognises that the work of medical professionals in one scheme may be applicable to another, there is no visibility of whether those who helped with the creation of the guidelines did so with the types of activities those within the scheme undertake. That the actual document that is to form the Guidance has not been provided, merely a document identifying comparable legislative references, is somewhat dismissive of scheme participants.

Page two to four of the consultation document (which totals 4 pages) identifies the specific legislative references in the Seacare Act relating to permanent impairment. It is of interest to note that s 42 of the Seacare Act states:

1. The Authority (meaning the Seacare Authority) may prepare a guide setting out certain things
2. The Guide has no effect unless approved by the Minister
3. The Authority may vary or revoke the guide.

It is clear that under the legislation that the Guide itself is to be made by the Authority if the Authority decides to make it. It is plain that it is not compulsory for a Guide to be made or in force, notwithstanding that it may be of assistance when determining impairment under the Act. While MIAL supports the Authority making Guidance which assists with efficiently determining rights and liabilities under the Seacare Act, that this review is being undertaken (albeit by Comcare) while reforms to resolve the fundamental issues with the scheme are not being undertaken amounts to a skewed sense of priorities. Piecemeal reforms to supporting instruments does not and cannot rectify a scheme that is currently fundamentally flawed.

In terms of the Guidance itself, MIAL does see benefit in aligning medical guidance across workers compensation schemes, given that this guidance with some amendment has been adopted in other jurisdiction, MIAL does not fundamentally object to the draft, notwithstanding guidance specifically for Seacare has not been released.

The Department continues to conduct piecemeal consultation usually based on instruments from within a different scheme. Dedicated consultation for the Seacare scheme appears to be a secondary concern. The Government should accordingly consider the utility of a scheme

² Draft Guide to the Assessment of the Degree of Permanent Impairment – Edition 3 – Stakeholder Consultation Paper – June 2021, pg.9

which covers some 157 ships (with tens of thousands more requiring exemption from the Seacare Authority annually, as a result of coverage uncertainty highlighted in *Samson v Aucote*³) and 3885 employees if it is not prepared to dedicate resources to make it a contemporary scheme.

Please do not hesitate to contact the undersigned on 03 9647 6005 or at sarah.cerche@mial.com.au if you require further clarification.

Kind Regards,

Sarah Cerche

Director, Workplace Relations Domestic and International

Maritime Industry Australia Ltd

³ [2014] FCAFC 182