

Section 20A Request for Exemption from the Application of the *Seafarers Rehabilitation and Compensation Act 1992*



Australian Government
Seafarers Safety, Rehabilitation
and Compensation Authority

Seacare Form 10

To request an exemption from the application of the *Seafarers Rehabilitation and Compensation Act 1992* pursuant to section 20A of that Act, an applicant must:

- ❑ ensure that the conditions established by the Seacare Authority Exemption Guidelines are met (see **Attachment A**). The Authority considers all requests for exemption in accordance with these Guidelines;
- ❑ complete and sign the attached application form;
- ❑ check the residency details of the employees subject to the proposed exemption;
- ❑ attach written evidence of the workers' compensation policy that will completely cover employees in the event that an exemption is granted — the Authority has provided guidance on what constitutes sufficient written evidence at **Attachment B**;
- ❑ forward the application form to the Authority by facsimile on 02 6275 0067; email to seacare@comcare.gov.au; or mail to Seacare Authority, GPO Box 9905, CANBERRA ACT 2601 at least seven days before the commencement date of the proposed exemption; and
- ❑ notify the Authority by telephone on 02 6275 0070 or email to seacare@comcare.gov.au that an application form has been submitted.

Issued on behalf of the Seacare Authority

Date: November 2000

Application for s20A Exemption
SEAFARERS REHABILITATION AND COMPENSATION ACT 1992



Australian Government
 Seafarers Safety, Rehabilitation
 and Compensation Authority

Seacare Form 10

1. Please provide the details of the person making this application

Name: _____
 Company: _____
 Position in company: _____
 Postal Address: _____
 Telephone: _____ Facsimile: _____
 Email: _____

2. Please provide details of the employer of the employees for whom this application is made

Trading Name: _____
 Company Name: _____
 ABN/ACN: _____
 Contact Officer: _____
 Postal Address: _____
 Telephone: _____ Facsimile: _____
 Email: _____

3. Is there any other employer associated with the ship and voyage(s) in respect of which this exemption is sought?

- No. Go to question 4
 Yes. Details as listed at question 2, 5 & 6 are to be provided for each employer.

4. Please provide details of the ship and voyage(s) in respect of which this exemption is sought

Name of Ship: _____

Purpose of voyage: _____

Start Date: _____ Departing from: _____

End Date: _____ Arriving at: _____

Other relevant details such as other ports expected to be visited: _____

5. Please indicate the number of employees subject to the proposed exemption by place of residence. (If multiple employers, this information is to be provided by each employer).

State of Residency	NSW	VIC	WA	QLD	SA	TAS	NT	Outside Australia
Number of Employees								

6. Please attach written evidence of the workers' compensation policy that will completely cover the above employees for the voyage(s) described in section 4 in the event that the Authority grants your request. This is to be provided for each employer involved.

Signature: _____

Date: _____

Note: The Seafarers Safety, Rehabilitation and Compensation Authority is empowered to grant exemptions from the Seafarers Rehabilitation and Compensation Act under section 20A of that Act. A decision made under s.20A is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

SEACARE AUTHORITY EXEMPTION GUIDELINES (AS AT 30 AUGUST 2007)

Without limiting in any way the power of the Seafarers Safety, Rehabilitation and Compensation Authority (the Authority) to exempt employment on a particular ship from the operation of the *Seafarers, Rehabilitation and Compensation Act 1992* (the Seafarers Act) pursuant to section 20A, the Authority has adopted the following guidelines to assist in determining exemptions.

1. Application to the Authority for an exemption

All requests for exemptions from the application of the Seafarers Act by operators should be furnished to the Authority in writing and be:

- (a) in accordance with the *Request for Exemption from the Application of the Seafarers Rehabilitation and Compensation Act 1992* form (Seacare Form 10);
- (b) accompanied by written evidence from an insurer that the employees will be completely covered by a valid, current and suitable workers' compensation policy (including under a State or Territory workers' compensation scheme) for the duration of the proposed period of exemption from the Seafarers Act; and
- (c) provided by mail, email or facsimile within a minimum of 7 days prior to the proposed date of commencement of the exemption (noting that more complex requests may take longer to determine and that applicants will be promptly advised if a longer period is required).

Note:

The Authority may exempt the employment on a particular prescribed ship from the operation of the Seafarers Act pursuant to section 20A of that Act by its own motion (i.e. without an application from the operator of the prescribed ship which would be subject to the exemption granted) if the Authority considers that in all the circumstances it is appropriate to grant the exemption. The Authority will not grant such an exemption without giving notice in writing to the operator of the prescribed ship to which the exemption relates.

The notice should state that the Authority is considering exempting the employment of seafarers on that prescribed ship from the operation of the Seafarers Act and set out any conditions of the proposed exemption. The Authority should allow the operator of the prescribed ship a reasonable opportunity to respond to the notice.

In determining whether to grant the proposed exemption in relation to the particular prescribed ship the Authority should consider any response received from the operator to the notice of the Authority's intention to grant the proposed exemption.

Alternatively, the Authority may advise industry or sections of industry of its exemption guidelines and request applications for exemptions from operators of prescribed ships that could be covered by the guidelines.

2. Consideration by the Authority of an application for exemption

2.1 General

- (a) Consideration by the Authority of an application for exemption from the operation of the Seafarers Act will in every case involve an assessment pursuant to section 19 of the Seafarers Act as to whether the Seafarers Act has application to the employment of the employees on the particular ship or ships which would be subject to the proposed exemption.

For example, fishing vessels and fishing fleet support vessels proceeding on voyages other than overseas voyages would not be covered by the legislation; therefore applications for exemption would be inappropriate.

- (b) All requests for exemptions will be considered on their merits.
- (c) In accordance with section 20A(4) of the Seafarers Act the Authority will not grant an exemption from the operation of the Act if the proposed exemption would be inconsistent with an obligation of Australia under an international agreement.
- (d) Among the primary factors that will be considered by the Authority in determining whether to grant an exemption are the nature of the operations and the voyage arrangements of the prescribed ship or ships.

For example, without limiting the circumstances in which the Authority may exempt employment on a particular prescribed ship from the operation of the Seafarers Act, the Authority may consider granting an exemption from the operation of the Act in the following circumstances:

- (i) The prescribed ship's proposed voyage or voyages do not constitute a regular trading pattern; or
- (ii) The prescribed ship is expected to voyage between two places outside Australia over a period of 12 months or more, and the majority of crew on the prescribed ship are not residents of Australia; or
- (iii) The voyages undertaken by the prescribed ship or ships which make the prescribed ship or ships subject to the operation of the Seafarers Act are incidental to the primary operations of the prescribed ship/ships; or

For example, a prescribed ship engaged in a particular industry is required to undertake inter-State voyages so that the prescribed ship can engage in and perform those industry operations/activities i.e. undertaking inter-State voyages cannot be considered to be a primary part of or integral to the operations of the ship.

- (e) A further primary factor that will be considered by the Authority in determining an application for exemption is if workers' compensation insurance is available to a relevant employer under a State or Territory scheme, at a cost lower than that available under the Seacare scheme¹. The Authority may exempt employment on a particular prescribed ship from the operation of the Seafarers Act where an employer is able to demonstrate to the Authority that workers' compensation cover is available to its employees under another

¹ This primary factor is included in these guidelines in accordance with the *Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)*, issued by the Minister on 24 August 2006.

Australian workers' compensation scheme, at a cost that is below that available under the Seacare scheme.

- (f) Another factor that may be considered by the Authority in determining an application for exemption from the operation of the Act is the size of the prescribed ship or ships.

For example, without limiting the circumstances in which the Authority may exempt employment on a particular prescribed ship from the operation of the Seafarers Act, the Authority may consider granting an exemption from the operation of the Act where a prescribed ship is under 500 gross tonnes.

2.2 *Prescribed ships operating in the Northern Territory only*

Where applications are received from operators of prescribed ships that only undertake voyages within a Territory and do not voyage between a Territory and a place (or places) outside a Territory, the Authority will normally, in the absence of any overriding considerations which the Authority determines would make it inappropriate to grant the exemption, grant the exemption applied for.

3. Granting an exemption

- (a) Any exemption granted by the Authority from the operation of the Seafarers Act under section 20A must be issued in writing by the Authority.
- (b) An exemption granted by the Authority to employment on a prescribed ship or ships from the operation of the Seafarers Act must specify:
- (i) the particular prescribed ship or ships to which the exemption granted by the Authority applies; and
 - (ii) the employees on the prescribed ship or ships to which the exemption relates.
 - The employees to which the exemption may relate may be specified to be all or some employees, or particular groups of employees.
- (c) In order to provide certainty in the operation of an exemption granted to employment on a particular prescribed ship or ships, the scope of an exemption granted by the Authority should be specified to be limited in scope to either:
- (i) a particular voyage or voyages; or
 - (ii) a specified period of time; or
 - (iii) both a particular voyage or voyages and an approximate period of time.
 - If the scope of an exemption granted by the Authority is limited to a specified or approximate period of time, the exemption should specify the time and date the exemption is expected to commence to have effect and the time and date on which the exemption ceases to have effect or is expected to cease to have effect.
 - If the scope of an exemption granted by the Authority is limited to a particular voyage, the exemption should at least specify the itinerary departure and arrival destinations and the estimated departure and arrival times of the voyage.

- It may be appropriate for the exemption to be expressed to allow for slippage in respect of the estimated departure and arrival times of a particular voyage. Conditions may be attached to the exemption in this respect, for example notification by the operator of the revised itinerary to the Authority may be required.
 - However, whether the scope is limited to a period of time or a particular voyage or both, the Authority should not grant an exemption which would have effect for a period longer than 12 months.
 - On or before the expiration of the exemption, if a future exemption is required, the operator of the prescribed ship to which the exemption relates must make a further application to the Authority for an exemption from the operation of the Act. The Authority will then assess such further application in accordance with these guidelines.
- (d) An exemption granted by the Authority must set out any conditions attached to the granting of the exemption.

4. Operation of an exemption

- (a) An exemption granted by the Authority is subject to any conditions set out in the exemption.
- (b) While the terms and conditions of an exemption granted by the Authority are met, the Seafarers Act will not apply to the employment on the prescribed ship which is subject to the exemption granted.
- (c) If the terms and/or conditions to which an exemption is subject are breached, the exemption becomes null and void and the Seafarers Act will again apply to the prescribed ship.
- (d) The Authority has the power to amend the terms and conditions of the exemption granted to an operator of a prescribed ship. If the Authority amends the exemption granted it will:
- (i) give notice, in writing, of the amendment to the operator of the prescribed ship to which the exemption relates; and
 - (ii) include in that notice details of the amendment to the exemption granted.
- (e) The Authority has the power to revoke an exemption granted to the operator of a prescribed ship. If the Authority decides to revoke an exemption, the Authority will:
- (i) give notice, in writing, of its decision to revoke the exemption to the operator of the prescribed ship which is the subject of the exemption granted; and
 - (ii) include in that notice the reasons for deciding to revoke the exemption granted.
- (f) Exemptions granted by the Authority only apply to the application of the Seafarers Act. The *Occupational Health and Safety (Maritime Industry) Act 1993*, the *Seafarers Rehabilitation and Compensation Levy Act 1992* and the *Seafarers Rehabilitation and*

Compensation Levy Collection Act 1992 and regulations made under those Acts may still apply.

5. Review

The decision by the Authority to grant, revoke or amend an exemption from the operation of the Seafarers Act is a decision which may be subject to judicial review under the *Administrative Decision (Judicial Review) Act 1977* on the legal grounds set out in that Act (i.e. the review is not a merits review).

6. Interpretation

A voyage does not constitute a regular trading pattern where:

- (a) a voyage either: among the States; or between a State and Territory; or between two Territories is not normally undertaken as part of the principal operations of the prescribed ship; or
- (b) a voyage between Australia and a place (or places) outside Australia is not normally undertaken as part of the principal operations of the prescribed ship.

For example, a non-regular trading pattern would be a delivery voyage among two States (or a single voyage between Australia and a place outside Australia) where the prescribed ship is normally engaged in intra-State voyages or voyages within a single Territory only.

WRITTEN EVIDENCE

The following constitutes sufficient written evidence of a workers' compensation policy:

- a letter from your insurer detailing your insurance coverage; or
- a letter from your State/NT workers' compensation authority detailing coverage.

Documentation provided, as indicated above, must include the following:

- full name of the employer;
- name of the insurer;
- policy details (such as the relevant workers' compensation scheme);
- policy number;
- date of commencement of policy;
- date of expiry of policy (or if a rolling policy, indicate this);
- the situation and voyages for which cover will be provided; and
- the cost of the policy and the cost of equivalent Seafarers Act cover (as appropriate).