



Seafarers Safety, Rehabilitation and Compensation Authority



**Annual Report
1998–1999**



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The Hon Peter Reith, MP
Minister for Employment, Workplace Relations and Small Business
Parliament House
CANBERRA ACT 2601

Dear Minister

I am pleased to present the Annual Report on the activities of the Seafarers Safety, Rehabilitation and Compensation Authority for the year ended 30 June 1999.

The report is provided in accordance with section 125A(1) the *Seafarers Rehabilitation and Compensation Act 1992* and subsection 34C(2) of the *Acts Interpretation Act 1901*.

Yours sincerely

A handwritten signature in black ink, which appears to read "Geoffrey Gronow".

Geoffrey Gronow
Chairperson
12 October 1999

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Chairperson's Report



I am pleased to report on the activities of the Seafarers Safety, Rehabilitation and Compensation Authority—otherwise known as the Seacare Authority—for the period of 1998–99. I commenced as the Chairperson on 1 September 1999, some time after the end of the financial year. The annual reporting process has been a useful induction, which has broadened my understanding of the challenges facing the Authority in the year ahead.

In 1998–99 the Authority met on four occasions and considered important issues affecting workers' compensation and occupational health and safety (OHS) matters.

One key outcome of these deliberations was agreement by the Authority to participate in the comparative performance monitoring (CPM) project conducted under the auspices of the Workplace Relations Ministers' Council—a project developed to compare the performance of workers' compensation and OHS schemes across Australia and New Zealand. The Authority's decision to participate in the project initiated a detailed consideration of the Seacare workers' compensation data, and requirements for improvement in this area. As a result, the Authority has approved a new *Claim for Rehabilitation/Compensation* form aimed at improving data quality. This will allow the Authority to gain a clearer picture of the incidence of injury, and improve workers' compensation and OHS outcomes in the industry.

In the area of OHS, the *Occupational Health and Safety (Maritime Industry) Regulations 1995* were amended to set new time limits to alert and report incidents and near-miss occurrences to the Australian Maritime Safety Authority. New reporting forms were introduced. This removed duplication of reporting requirements under the Regulations and Marine Orders made pursuant to the *Navigation Act 1912*.

Another key matter of interest to the Authority was reconsideration of the coverage of the *Seafarers Rehabilitation and Compensation Act 1992* and the *Occupational Health and Safety (Maritime Industry) Act 1993* in the light of recent

judgments of the Administrative Appeals Tribunal and the Federal Court of Australia. Further work may need to be undertaken in 1999–2000 to clarify the coverage of the two Acts and to advise the industry appropriately.

Work also commenced on developing ways to improve the accessibility of information about the scheme, including through the development of a web site and new contact arrangements.

In 1998–99 the Authority dealt with continuing matters such as considering applications for exemption from the Act and for extensions of time in which employers must consider or reconsider workers' compensation claims, advising industry participants about the scheme, and obtaining advice on the adequacy of insurance and indemnity arrangements in the industry.

In relation to administrative arrangements, the Secretariat for the Authority transferred to the Safety and Compensation Policy Branch of the Department of Employment, Workplace Relations and Small Business. The Maritime Transport Group, which previously had responsibility for the function, returned to the Department of Transport and Regional Services.

Overall, the year was a challenging and successful one for the Seacare Authority and has opened the way for further improvements to the operation of the scheme. I look forward to working with every member of the Authority to improve its administration.

Finally, I would like to acknowledge the valuable contribution made by all members of the Seacare Authority throughout the financial year. I would especially like to highlight the contributions of the former Chairperson, Ms Dianne Hawgood, who provided substantial direction during her term of office and facilitated an easy transition to my position in the Authority. I would also like to thank the Australian Maritime Industry Compensation Agency for its assistance in collecting and processing statistical information for the Authority.

GEOFFREY GRONOW, ED
CHAIRPERSON

CHAPTER 1

Overview of the Seafarers Safety, Rehabilitation and Compensation Authority

1.1 Functions of the Authority

The Seafarers Safety, Rehabilitation and Compensation Authority (known as the Seacare Authority) is a statutory body established under the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers R&C Act). The Authority performs a series of functions under that Act as well as functions conferred on it by the *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS(MI) Act).

The functions of the Authority are to:

- monitor the operation of the Seafarers R&C Act;
- promote high standards of claims management and effective rehabilitation procedures by employers;
- cooperate with other bodies or persons with the aim of reducing the incidence of injuries to employees;
- publish material relating to the above functions;
- formulate policies and strategies relating to employees' OHS;
- accredit OHS training courses for the purposes of section 47 of the OHS(MI) Act;
- ensure compliance with the obligations imposed by the OHS(MI) Act and Regulations;
- advise operators, employees or contractors on OHS matters, either on being asked or of the Authority's own initiative;
- liaise with other bodies concerned with OHS;
- collect, interpret and report information relating to OHS;
- advise the Minister for Employment, Workplace Relations and Small Business on:
 - matters relating to the Authority's functions and powers and other matters relating to the compensation and rehabilitation of employees;
 - the most effective means of implementing the OHS(MI) Act;
 - making regulations under the OHS(MI) Act;
 - approving codes of practice relating to OHS in the maritime industry; and
 - any such other functions as are conferred on the Authority by the Seafarers R&C Act and the OHS(MI) Act or any other Act.

1.2 Membership of the Authority in 1998–99

The Seacare Authority has seven members, six of whom are appointed by the Minister. The Minister appoints a Chairperson, Deputy Chairperson, two employer representatives and two employee representatives. The Chief Executive Officer of the Australian Maritime Safety Authority (AMSA) is an *ex officio* appointee to the Authority.



*Dianne Hawgood
Chairperson to 31 August 1999*

Ms Hawgood is the Group Manager of the Regional Delivery Group in the Commonwealth Department of Employment, Workplace Relations and Small Business.



Clive Davidson, Member

Mr Davidson is the Chief Executive Officer of the Australian Maritime Safety Authority.



Warwick Norman, Member

Captain Norman is BHP Transport's Integrated Logistics Advisor. He represents the interests of employers in the trading fleet sector.



Padraig Crumlin, Member

Mr Crumlin is the Deputy National Secretary of the Maritime Union of Australia. He represents seafarers' interests.



Martin Byrne, Member

Mr Byrne is the Assistant Federal Secretary of the Australian Institute of Marine and Power Engineers. He represents seafarers' interests.



David Smith, Member

Mr Smith, P&O Maritime Services' Insurance Manager, represents the interests of employers in the offshore petroleum and gas sector.

The position of Deputy Chairperson was vacant at 30 June, 1999.

1.3 Recent Membership Changes

Ms Dianne Hawgood resigned from her position as Chairperson of the Authority, with effect from 31 August 1999.

Mr Geoffrey Gronow was appointed as the new Chairperson of the Authority on 1 September 1999. Mr Gronow is a partner in the law firm Middletons Moore & Bevins. He is a solicitor and barrister in the High Court of Australia and the Supreme Court of Victoria.

Ms Sheila Butler was appointed as the new Deputy Chairperson of the Authority on 1 September 1999. Ms Butler is the Assistant Secretary of the Safety and Compensation Policy Branch of the Department of Employment, Workplace Relations and Small Business.

1.4 Equal Employment Opportunity in Appointments

The former Chairperson, Ms Dianne Hawgood, and the new Deputy Chairperson, Ms Sheila Butler, are both from an Equal Employment Opportunity target group. They were the first and second women appointees to the Authority respectively.

CHAPTER 2

Major Activities in 1998–99

2.1 Priority Issues

Workplace Relations Ministers' National Comparative Monitoring Project

At its meeting of 2 September 1998, the Authority agreed to participate in the national comparative performance monitoring (CPM) project, conducted under the auspices of the Workplace Relations Ministers' Council. The CPM project in Australia and New Zealand covers all OHS and workers' compensation authorities in Australia. Workplace Relations Ministers initiated the project to compare and consider the merits of different arrangements, as well as aid the development of effective and cohesive approaches to workplace safety and injury management.

More specifically, the goals of the CPM project are to:

- provide information on outcomes in the workplace which will allow more informed policy-making and program development by governments;
- show how resources are being used and the outcomes achieved with them;
- highlight significant variations in performance between health and safety and workers' compensation jurisdictions over time;
- help identify factors that contribute to differing levels of performance; and
- improve awareness and understanding of OHS achievements.

To facilitate the Authority's participation in the CPM project, the Department of Employment, Workplace Relations and Small Business (DEWRSB) commissioned an actuarial firm, William M Mercer Pty Ltd, to evaluate the suitability of the Seacare data for inclusion in the project. The consultant found that there were difficulties with the data quality and recommended the following measures:

- redesign of the *Claim for Rehabilitation/Compensation* form;
- improved data collection and recording methods in relation to ship crewing levels;
- improvements in the claim update process; and
- improvements in the database maintained by the Australian Maritime Industry Compensation Agency (AMICA).

The Authority approved a new *Claim for Rehabilitation/ Compensation* form, which adopted measures suggested by the consultant, and had regard to revisions to the National Data Set being introduced by the National Occupational Health and Safety Commission. Additional items concerning rehabilitation were included in the form to assist consideration of the industry's rehabilitation performance. The new form has been used in the industry from 1 July 1999.

The Authority agreed that it should act upon the remaining matters and, where responsibilities lay elsewhere, that the appropriate agency be strongly encouraged to adopt the recommended reforms. In March 1999, the Chairperson of the Authority wrote to AMICA—the agency responsible for collecting the workers' compensation and rehabilitation data for the scheme—and urged it to implement the recommended measures at the earliest opportunity. The measures included improvements to the claims update process and the database maintained in respect of workers' compensation and rehabilitation.

Coverage of Legislation

The Authority considered the application of the Seafarers R&C and the OHS(MI) Acts in the light of Administrative Appeals Tribunal (AAT) and Federal Court decisions that clarified coverage in the areas of the offshore oil and gas industry and the types of vessels covered, particularly within a Territory.

In the case of *Gabriella Jean Piscioneri (on behalf of Kimberley and Emma Collins) and Tidewater Port Jackson Marine* (AAT No12487), the AAT found that the deceased seafarer in question was not covered by the Seafarers R&C Act, but appeared to have access to equivalent entitlements by virtue of the relevant industrial award. The Tribunal determined that the award could not confer jurisdiction on the AAT and dismissed the matter.

The Piscioneri decision raised issues about the workers' compensation coverage of seafarers engaged in the offshore oil and gas industry who derive entitlements from industrial awards and agreements. In the light of recent changes to federal industrial legislation, the Australian Government Solicitor (AGS) was consulted on the workers' compensation coverage of these employees. AGS advised that employers in the offshore oil and gas sector should confirm their workers' compensation coverage, particularly where they have struck new federal certified agreements as these may operate subject to State and/ or Territory workers' compensation laws.

The Authority noted that DEWRSB would progress the matter with State and Territory workers' compensation authorities,

and write to operators in the sector, maritime unions and relevant industry bodies. Two options that operators might consider to address the coverage issue would be to obtain a declaration from AMSA under the Navigation Act or take steps to comply with State and/or Territory workers' compensation laws.

In the case of *Tiwi Barge Services Pty Ltd v Julie Ann Stark* [1997] FCA 874, the Federal Court determined that the application section in the Seafarers R&C Act—and by implication the OHS(MI) Act—has primacy over most provisions of the Navigation Act. This means, in particular, that 'prescribed ships' operating within a Territory, and possibly some other categories of vessels, would appear to be subject to these Acts. For the OHS(MI) Act, 'prescribed units' operating within a Territory would also appear to be subject to that Act.

DEWRSB and the Authority have the matter under consideration.

Improving Communication with the Authority

In 1998–99 the Authority commenced a process of improving access to information about the Seacare scheme. The Authority agreed to new arrangements for a web site (<http://www.seacare.gov.au>) and the creation of a dedicated voicemail service and email address to handle inquiries. The Authority also agreed that work should begin on developing information on aspects of the scheme in leaflet form for public dissemination.

2.2 Rehabilitation and Compensation in 1998–99

Coverage of the Seafarers Rehabilitation and Compensation Act

The Seafarers R&C Act applies to seafarers employed on 'prescribed ships' (that is, ships covered by Part II of the Navigation Act) that are engaged in trade or commerce: between Australia and places outside Australia; between two places outside Australia; among the States; within a Territory; between a State and a Territory; or between two Territories.

In addition, the Act applies to seafarers employed on 'prescribed ships' that are offshore industry vessels subject to a declaration under section 8A(2) of the Navigation Act or trading ships subject to a declaration under subsection 8AA(2) of that Act.

Insurance and Indemnity Arrangements

Section 93 of the Seafarers R&C Act requires each employer to have a policy of insurance or indemnity in respect of liabilities under that Act. Employers of seafarers on ships under the jurisdiction of the Act have continued to inform the Authority that policies of insurance or indemnity are in place. In addition,

a number of employers subject to industrial awards or agreements that provide workers' compensation benefits equivalent to the Seacare scheme also advised that they had policies of insurance or indemnity in place.

Determination of Exemptions from the Application of the Seafarers Rehabilitation and Compensation Act

Since 1997, the Authority has been empowered to exempt the employment on a particular ship of all employees, of a particular group or particular groups of employees, or of a particular employee or particular employees from the application of the Seafarers R&C Act (section 20A). On 4 December 1998, the Authority reviewed its policy on granting exemptions and, without limiting its power in any way, agreed to adopt the following guidelines:

- (a) in respect of individual exemptions, each case will be considered on its merits;
- (b) as a general principle, exemptions may only be granted in cases in which a State or Territory compensation scheme applies or other suitable workers' compensation cover has been obtained;
- (c) exemptions should only be granted to those arrangements that could not be considered to constitute any form of regular trading pattern. For example, the Authority would consider two applications for exemption in respect of a ship within a short time frame if there were evidence to suggest that there were unlikely to be further requests for some time after the two requested exemptions; and
- (d) blanket exemptions for periods of time will not generally be granted, even those of short duration. An exception to this might include cases in which a ship is operating permanently overseas with locally engaged crew.

As noted in (b) above, the Authority is prepared to grant exemptions only when there is suitable workers' compensation cover in place, including cover under a State or Territory scheme. In 1998–99 most State and Territory schemes provided for extra-territorial operation, although the Authority understood that the *Queensland Workers Compensation Act 1990* was not capable of applying in cases in which ships were on interstate or overseas voyages. The Queensland Act was amended with effect from 1 July 1999 to provide extra-territorial operation for operators undertaking such voyages.

In 1998–99 the Authority received 12 applications for exemption from the Seafarers R&C Act and granted eight.

Two applications were refused on the ground that the seafarers concerned would not have access to suitable workers' compensation cover because of the operation of *Queensland Workers Compensation Act 1990*. The other two applications were completed in July 1999.

Determination of Extensions of Time

Under sections 73, 73A and 79 of the Act, employers are required to complete consideration or reconsideration of claims for compensation within specified time limits. If the consideration or reconsideration cannot be completed within the specified time, an employer may seek an extension of time from the Authority.

In 1998–99 the Authority received eight applications for extensions of time to consider or reconsider a claim for compensation. Five were granted. The remaining three were refused on the grounds that the statutory time limit had expired (two applications) or that the Authority did not have jurisdiction (one application).

Rehabilitation and Return to Work

The Seafarers R&C Act contains measures intended to ensure that injured seafarers are rehabilitated effectively, leading to an early and successful return to work. This is intended to reduce time lost through work-related injuries and associated compensation costs.

The Authority believes that there is scope to improve the industry's rehabilitation performance. In part, this involves the collection of reliable and informative data. This process was commenced with the introduction of the new *Claim for Rehabilitation/ Compensation* form, which includes questions about job characteristics and return to work details. Employees are now asked to identify unsuccessful return to work experiences associated with their workers' compensation claims. Employers are asked about the employees' rehabilitation status and whether they have made arrangements to assess the claimants' capacity to return to work where injuries involve or are likely to involve incapacity for work of 28 days' duration or more.

2.3 Occupational Health and Safety in 1998–99

Coverage of the Occupational Health and Safety (Maritime Industry) Act

The OHS(MI) Act applies to 'prescribed ships' and 'prescribed units' (that is, ships and units covered by Part II of the Navigation Act) engaged in trade or commerce: between

Australia and places outside Australia; between two places outside Australia; between the States; within a Territory; between a State and a Territory; or between two Territories.

In addition, the Act applies to offshore industry vessels subject to a declaration under subsection 8A(2) of the Navigation Act and trading ships subject to a declaration under subsection 8AA(2) of that Act.

This means that the OHS(MI) Act has wider application than the Seafarers R&C Act, which applies to declared vessels only if they are 'prescribed ships' and not to offshore industry mobile units.

Training for Occupational Health and Safety Representatives

During the year, the Authority considered the low take-up and completion rates of training of representatives in the shipping industry. The approved training course *Maritime Industry Health & Safety Representatives Distance Learning Course* comprises a package of audio cassettes and course work and is available to all seafaring personnel through their employers. Seafarers are able to complete the course at their own pace and, with the agreement of their employer, during working hours.

Notwithstanding the self-paced style of the training, the Authority noted that few seafarers were accessing and completing the course. Members agreed to give the matter further consideration in the year ahead, including to identify reasons for the low rates of take-up and completion of the package and measures to improve performance in this key area of safety awareness.

Activities of the Inspectorate

The Australian Maritime Safety Authority (AMSA) performs the inspectorate function under the OHS(MI) Act. AMSA marine surveyors are appointed as inspectors and carry out investigations under the Act.

Statistics on inspection activities are in Chapter 5: Performance Report. A more comprehensive report of AMSA's activities is provided in its 1998–99 Annual Report.

In 1998–99 four companies were charged with breaches of the OHS(MI) Act. Three companies were charged with failing to comply with sections 11 and/or 13 of the Act, including:

- one charged with breaching section 11 of the Act where it is alleged that the company failed to comply with its duty of care in an incident in which eight seafarers were injured when a lifeboat fell 20 metres during a lifeboat drill. This case is

yet to be heard;

- two (comprising a ship management company) were fined \$6000 each and ordered to pay costs of more than \$3500 in relation to an incident in which a contractor's employee suffered severe injuries when crushed by a lift in the lift shaft. Both companies pleaded guilty to failing to take all reasonably practicable steps to protect the health and safety at work of contractors and employees. The magistrate found that although the companies had a sound theoretical approach to safety, certain precautions had not been implemented appropriately.

Another company was convicted under section 24 of the Act in relation to the same incident, but has appealed to the Supreme Court of Victoria on a point of law.

2.4 Other Business

Advice to Industry

The Authority issues notices to advise industry parties of changes in benefit levels and other matters. In 1998–99 the Authority issued five notices, free of charge, to more than 150 interested parties including operators, industry associations, trade unions, insurance brokers and solicitors. In future, notices will be made available to the public through the Authority's web site.

Social Justice

A social objective of the Seafarers R&C Act is to ensure that seafarers are not unfairly disadvantaged because of work-related injuries. The Authority reinforces this objective by providing information about the scheme to seafarers, employers, maritime unions, industry associations, insurance brokers and the legal profession.

In 1998–99 the Authority agreed to implement mechanisms to improve access to information on rights, entitlements and obligations under the Seafarers R&C Act including:

- development of an Internet site (<http://www.seacare.gov.au>). The site provides information on the role of the Authority, membership details, notices about the operation of the Acts, contact details for inquiries and links to relevant sites and legislation;
- creation of a separate email address (seacare@dewrsb.gov.au) for general inquiries and correspondence for the Authority; and
- establishment of a dedicated voicemail service to ensure that all inquiries are dealt with in an efficient and timely manner.

Access and Equity

The Authority complies with all relevant anti-discrimination legislation. It provides information, free from prejudice, to all members of the public.

Client Service Charter

The Authority operates in accordance with the client service charter of DEWRSB.

Internal and External Scrutiny

In 1998–99 the Authority received no requests for information under the *Freedom of Information Act 1982*, nor any inquiries from the Commonwealth Ombudsman or in relation to matters under the *Privacy Act 1988*.

Although the Authority itself was not scrutinised by any external organisations, the Australian National Audit Office approached DEWRSB to obtain information about the *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* and the *Seafarers Rehabilitation and Compensation Levy Act 1992*. The Department reported that the Acts had been developed as a contingency measure and that the industry levy was not operative at present. The levy will remain inactive as long as AMICA, the agency approved as ‘the Fund’ under the Seafarers R&C Act, continues to satisfy the requirements of sections 96 and 97 of that Act.

To ensure that the Minister can be satisfied that AMICA continues to meet its obligations under the Seafarers R&C Act, DEWRSB now seeks an annual report from AMICA on coverage and insurance information.

Requests for Information

Members of the public may obtain information about the Authority or advice on how to lodge a request for information under the Freedom of Information Act by contacting:

Executive Officer
Seafarers Safety, Rehabilitation and Compensation Authority
GPO Box 9879
CANBERRA ACT 2601
Phone: (02) 6121 7120
Fax: (02) 6121 7907
E-mail: seacare@dewrsb.gov.au

Administrative Support

The Authority does not have its own staff. The secretariat function of the Seacare Authority is undertaken by DEWRSB. The costs of the Authority are met from the Department's appropriation.

Consultancy Services

The Authority commissioned no consultancies in 1998–99, but was keenly interested in two consultancies commissioned by DEWRSB. One concerned the accuracy and reliability of the Seacare workers' compensation data. The other was concerned primarily with the development of safety performance indicators for the Australian shipping industry. These consultancies are discussed briefly below.

Report on Seacare Compensation Scheme Data

In October 1998, DEWRSB engaged William M Mercer Pty Ltd to consider the comparability of the Seacare workers' compensation and rehabilitation data with the data provided by other jurisdictions participating in the CPM project. The final report *Report of the Seacare Compensation Scheme Data* was provided to DEWRSB in January 1999. Among other things, the report:

- considered the level of comparability with data from other workers' compensation jurisdictions;
- recommended a method to adjust maritime data in order to establish an appropriate basis for comparison with other jurisdictions; and
- highlighted a range of measures required to improve the Seacare data quality.

Safety Performance Indicators for the Australian Shipping Industry

In January 1999, DEWRSB engaged Access Economics Ltd to assist the Safety Performance Indicators (Shipping Industry) Committee to develop a suite of 'outcomes' and 'process' focused safety performance indicators for the Australian shipping industry. A final report entitled *Safety Performance Indicators for the Australian Shipping Industry* was provided to the Committee in 1998–99 and its recommendations will be considered in 1999–2000. The consultancy involved:

- a stock-take of existing performance indicators on OHS, return to work and workers' compensation performance indicators in the shipping industry;
- identification of industry specific issues that affect OHS, return to work and workers' compensation;

- development of a suite of ‘process’ safety performance indicators for the shipping industry that are consistent with the International Safety Management Code of the International Maritime Organization (IMO);
- consideration of the performance indicators developed under the CPM project, conducted under the auspices of the Workplace Relations Ministers’ Council;
- identification of methods of collecting the proposed performance indicators; and
- discussion of the proposed indicators at meetings of the Committee.

CHAPTER 3

Amendments to Legislation

In 1998–99 DEWRSB took action to amend the *Occupational Health and Safety (Maritime Industry) Regulations 1995* (the OHS(MI) Regulations) to introduce new reporting requirements and time limits for incidents that occur on board vessels covered by the OHS(MI) Act. The new requirements were gazetted to commence on 1 July 1999.

The OHS(MI) Regulations introduced new *Incident Alert* and *Incident Report* forms. These forms were developed by AMSA to streamline reporting requirements under the Navigation Act as well the OHS(MI) Regulations. Under these revised arrangements, an operator must:

- notify AMSA of incidents in accordance with the *Incident Alert* form within four hours of becoming aware of the incident or as soon as practicable at the end of that time; and
- report incidents to AMSA in accordance with the *Incident Report* form within 72 hours of becoming aware of the incident or as soon as practicable at the end of that time.

The types of incidents that must be reported include:

- accidents that cause death or serious personal injury;
- accidents that cause persons to be incapacitated for work for five or more successive days; and
- dangerous occurrences—that is, occurrences that arise from an undertaking conducted by or for an operator and which occur at a workplace and might have caused the death of or serious personal injury to any person, or the incapacity of an employee for five or more successive working days.

CHAPTER 4

Performance Report

4.1 Rehabilitation and Compensation Statistics

AMICA collects and prepares rehabilitation and compensation data for the Authority. Every endeavour has been made by AMICA to collect all statistical data for 1998–99, but it is possible that some data has not been received in time to be included in this Report.

It is difficult to compile accurate information on the number of seafarers covered by the Seafarers R&C Act. A number of ships are not directly subject to the Act, some operate for only part of the year, and others experience crew changes in the course of the year. For these reasons, the Authority has in past years reported the estimated number of employees covered by the Act at the end of the financial year.

In 1997–98 the Authority estimated whole-of-year crewing data instead. This approach took account of the crew numbers of all ships operating during the period, and has been continued in 1998–99.

In 1998–99 about 3,530 seafarers were affected by the Seacare scheme either by direct legislative coverage or through award and/or agreement provisions. Of the seafarers affected by the Seacare scheme, about 2,800 (or 79 per cent) were directly covered by the Act, and about 730 (21 per cent) were not covered by the Act but had equivalent industrial entitlements.

The tables below show data on workers' compensation claims made by seafarers directly covered by the Seafarers R&C Act.

Appendix 4 provides workers' compensation time-series data on the operation of the scheme as it applies to seafarers covered by the Act and extends to other seafarers with equivalent entitlements under industrial awards and agreements.

* In the tables below, items might not add to 100 per cent because of rounding.

Table 1—Nature of claims, 1998–99

Type of Claim	No of Claims	% of Claims
Time lost	145	85
Medical expenses only	22	13
Property loss/damage	3	2
Permanent impairment	0	0
Death	0	0
TOTAL	170	100

Table 2—Claims by job classification, 1998–99

Job classification	No of claims	No of claims *100 Population
Deck officers	18	3.0%
Engineering officers	31	5.0%
Integrated ratings	84	8.0%
Catering staff	36	8.2%
Trainees	1	1.0%
ALL CLASSIFICATIONS	170	6.2%

Table 3—Outcome of AAT review of reconsidered decisions, 1998–99

Outcome	1996–97	1997–98	1998–99
Undetermined matters brought forward from previous year	50	41	60
New applications made to AAT for review of reconsidered decisions	47	69	69
Affirmed by consent or withdrawn	24	21	30
Heard and employer's decision affirmed	5	2	1
Heard and employer's decision set aside	2	5	3
Heard and varied	0	1	1
Heard and remitted to employer	1	1	0
Decision set aside by consent	7	11	18
Decision varied by consent	10	4	7
Decision dismissed as non-reviewable	1	1	1
No jurisdiction	1	1	0
Other	2	1	2
Matters undetermined at 30 June	41	60	72

Note: In accordance with subsection 78(4) of the Seafarers Rehabilitation and Compensation Act, Comcare assisted employers with the reconsideration of 56 determinations in 1998–99.

Table 4—Location of person at time of injury by activity, 1998–99

Location by activity	No of claims	% of claims
Working on ship	166	97.6
Working ashore	1	0.6
At training course	2	1.2
Journey to or from ship	1	0.6
TOTAL	170	100

Table 5—Location of person at time of injury by place, 1998–99

Location by Place	No of claims	% of claims
Deck spaces ^a	72	42
Machinery spaces	29	17
Accommodation block	29	17
Other	27	16
Galley	11	6
Gangway/pilot ladder	2	1
Wharf	0	0
TOTAL	170	100*

^a Includes cargo spaces

Table 6—Claims by body part, 1998–99

Body Part	No of claims	% of claims
Lower limb	49	29
Upper limb	47	28
Back	27	16
Trunk	17	10
Head and neck	12	7
Psychological system in general	6	4
Multiple	5	3
Upper and lower limbs	0	0
Other	7	4
TOTAL	170	100*

Table 7—Mechanism of injury, 1998–99

Mechanism	No of claims	% of claims
Body stressing	51	30
Falls, trips and slips of a person	43	25
Being hit by moving objects	31	18
Hitting objects with a part of the body	15	9
Mental stress	5	3
Sound and pressure	2	1
Biological factors	2	1
Heat, radiation and electricity	1	1
Chemicals and other substances	1	1
Other and unspecified mechanisms of injury	19	11
TOTAL	170	100

Table 8—Claims by nature of injury, 1998–99

Nature of Injury	No of claims	% of claims
Strains, sprains of joints and adjacent muscles	76	45
Fractures (including vertebral)	27	16
Contusions	11	7
Open wounds	10	6
Mental disorders	8	5
Hernias	5	3
Disorders of muscle tendons and soft tissues	4	2
Superficial injuries	3	2
Damage to artificial aids	3	2
Dislocations	2	1
Respiratory diseases	1	1
Deafness and other ear diseases	1	1
Burns and scalds	0	0
Other	19	11
TOTAL	170	100*

Table 9—Period of incapacity for time lost claims (excluding rejected claims), 1998–99

Period of incapacity	No of claims
<i>Closed claims</i>	
Less than 3 months' incapacity	105
3 to 6 months	16
6 to 12 months	5
Over 12 months	0
<i>Total closed claims</i>	126
<i>Active claims</i>	61
TOTAL	187

4.2 Occupational Health and Safety Statistics

Statistical reports made by operators under Regulation 16 of the OHS(MI) Regulations indicated that about 2,890 full-time-equivalent employees were covered by the OHS(MI) Act during 1998–99, and that those employees worked a total of 492,960 hours in the industry.

In the past financial year, AMSA has:

- recorded five dangerous occurrences (compared with three in 1997–98);
- received 63 OHS Incident Reports (down from 124 reports in 1997–98);
- issued eight improvement notices (down from 13 in 1997–98);
- issued no prohibition notices (down from two notices in 1997–98);
- trained 15 AMSA surveyors in enhanced OHS investigation and inspection techniques.

The reduction in the number of incident reports should be interpreted cautiously because there might be a number of industry structural factors affecting the result.

APPENDIX 1

List of Enactments administered by the Minister for Employment, Workplace Relations and Small Business through the Seafarers Safety, Rehabilitation and Compensation Authority

Seafarers Rehabilitation and Compensation Act 1992

Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992

Seafarers Rehabilitation and Compensation Levy Act 1992

Seafarers Rehabilitation and Compensation Levy Collection Act 1992

Occupational Health and Safety (Maritime Industry) Act 1993

Seafarers Rehabilitation and Compensation Regulations

Occupational Health and Safety (Maritime Industry) Regulations 1995

APPENDIX 2

Publications—Issued to Maritime Industry Organisations and other Interested Parties 1998–99

5/1998 *Maximum Level of Weekly Benefits* (13 August 1998)

6/1998 *Maximum Level of Weekly Benefits* (19 November 1998)

1/1999 *Maximum Level of Weekly Benefits* (4 March 1999).

2/1999 *Maximum Level of Weekly Benefits* (20 May 1999)

3/1999 *Indexation—Increase In Benefits From 1 July 1999*

Guide to the Assessment of the Degree of Permanent Impairment

All of the above publications were issued free of charge.

APPENDIX 3

Significant Administrative Appeals Tribunal Decisions and Court Judgments

In 1998–99 the AAT decided six matters and the Federal Court decided two cases concerning the *Seafarers Rehabilitation and Compensation Act 1992*. In addition, the Supreme Court of Western Australia heard a case concerning the validity of section 54 of the Act. This appendix summarises the more significant decisions of these quasi-judicial and judicial bodies.

A3.1 Administrative Appeals Tribunal Decisions

Finestone and Broken Hill Proprietary Ltd [1998] AATA 832

The issue in this case was whether a stroke suffered by the applicant in the course of his employment constituted a ‘disease’ or ‘injury’ as defined in section 3 of the Seafarers R&C Act.

The applicant suffered a stroke ‘during the course of his employment’. Medical evidence evinced that the stroke had been caused by a local blockage of the artery rather than a rupture of the artery itself. On this basis, the company argued that the applicant’s stroke constituted a ‘disease’ rather than an ‘injury’ and was therefore not compensable.

While the case was in process, the Full Federal Court brought down its judgment in the case of *Australian Postal Corporation v Simon John Burch* [1998] FCA 944. The facts in that case were substantially similar. The Court considered these in the context of the definitions of ‘injury’ and ‘disease’ under the *Safety, Rehabilitation and Compensation Act 1988* and held that the applicant’s stroke constituted an ‘injury’ under that Act and was compensable.

The AAT noted that relevant legislation in *Burch* involved a consideration of definitions that are ‘for all intents and purposes identical’ with the counterpart provisions in the Seafarers R&C Act. It determined, and the company agreed, that *Burch* was binding, and that the applicant deserved a finding notwithstanding that Burch’s employer had sought special leave to appeal to the High Court. The AAT found that the stroke constituted a compensable ‘injury’ under the Seafarers R&C Act.

***Lawson and Stateships* [1999] AATA 231**

The issue in this case was whether a draft uncertified agreement between a company and its employees should be used as a basis to calculate the quantum of compensation entitlement.

The applicant submitted that in calculating his 'normal weekly earnings', regard should be had to wage increases provided in the document *Draft Without Prejudice, Union Bulk Ship Maritime Union of Australia Enterprise Agreement 1997*, which had been paid to employees since the date of the compensable injury. He argued that it was within the spirit and the letter of subsection 13(5) of the Act that actual wages paid to persons covered by his former classification be taken to be his 'normal weekly earnings'.

The AAT determined that 13(5) had no application as it was concerned only with wage increases arising from incremental advancement or the reaching of a particular age. Subsection 13(6) deals with increases or decreases in wages as a result of 'the making, alteration of an award, determination and certified agreement or the doing of any other act or thing under such a law', but was also found to have no application as there had been no such increases. The applicant's 'normal weekly earnings' were therefore found to be governed by the relevant award, not the award as varied by the draft uncertified agreement.

***Zutt and Total Marine Services Pty Ltd* [1999] AATA 313**

The issue in this case was whether incapacity to engage in work of the same level at the time of injury entitled the applicant to compensation under the Seafarers R&C Act.

The applicant sought a review of a determination by the employer to cease compensation payments. She was paid compensation until 23 March 1998 and afterwards received social security sickness benefits. On 1 November 1998 the applicant secured casual employment as a cook, or assistant cook, on board the *Spirit of Tasmania*, where her duties involved less lifting and carrying of heavy weights, and on a safer, more modern ship.

The applicant submitted that she was entitled to compensation from 23 March 1998 to 1 November 1998 on the ground that she had 'an incapacity to engage in work as an employee at the same rank or level at which he or she was engaged immediately before the injury happened' in accordance with subsection 8(b) of the Seafarers R&C Act.

The AAT determined that the applicant was entitled to compensation for the claimed period. It considered that

subsection 8(b) meant that the applicant ‘must have the capacity to engage in work as an assistant cook at sea, rather than she must have the capacity to engage in work as an assistant cook, e.g. on land’. In making its determination, the AAT noted that in a ‘fleet there would be a range of ships with differing facilities and a person who had been injured may be able to work on some but not all’.

A3.2 Federal Court Judgments

Alan Esam v ASP Ship Management [1998] 1129 FCA (10 September 1998)

This case involved a Federal Court appeal against an AAT decision that was reported in the 1997–98 Annual Report. The key issue is whether the state of the labour market is a relevant consideration when calculating the amount of compensation payable.

The applicant suffered an injury in 1995 and was later assessed to be no longer fit for employment that involved squatting and performing lifting tasks below waist level; he was, however, considered to be physically suited to sedentary work. The applicant had actively sought work but had been unsuccessful. Subsequently, his employer decided to reduce the amount of compensation payable to him on the basis that he was capable of undertaking clerical work. The AAT dismissed the application to review the employer’s decision to reduce his wage on the ground that his failure to secure work was due to economic reasons and not any incapacity caused by work.

The Federal Court set aside the AAT decision and remitted it back to the Tribunal for determination. Essentially, the Court found that, in reaching its decision, the AAT had erred in law by failing to give proper consideration and weight to the state of the labour market at the relevant time. The Court explained that the applicant would not be seeking work ‘but for’ the injury and that it would be difficult to support a view that the inability to find work was the result of economic circumstances or the state of the labour market alone.

A3.3 Supreme Court Judgments

Stephen Paul Smith & Ors v Australian National Line Ltd & Anor [1998] 159 ALR 431

The issue in this case is whether section 54 of the Seafarers R&C Act is invalid because it is contrary to section 51(xxxi) of the Australian Constitution, which concerns the acquisition of property by the Commonwealth on just terms.

Mr Smith was injured on 7 December 1988 while rigging and shackling a pilot ladder on board a vessel owned by Australian

National Line. He was injured again on 8 December 1988 while pulling an electric generator across the deck of the same vessel.

Mr Smith brought an action for damages against the company and the Commonwealth for a breach of duty in tort and a breach of contract of employment. The defendants claimed that the action was statute barred by section 54 of the Seafarers R&C Act, which provides that a seafarer cannot bring an action against his or her employer for injuries suffered in the course of employment. This provision operated subject to section 13 of the *Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992*, which allowed seafarers to bring actions within six months of the commencement of section 54 of the primary Act.

Mr Smith argued that section 54 of the Act was indistinguishable from section 44 of the Safety, Rehabilitation and Compensation Act, which the High Court had held was invalid in *Georgiadis v AOTC (1994)* 179 CLR 297 in so far as it purported to extinguish causes of action that had not been statute barred when they had commenced. Section 44 had been held invalid on the basis that it acquired property on other than just terms, contrary to section 51(xxxi) of the Constitution.

In the first instance, a single judge of the Supreme Court of Western Australia upheld the validity of section 54 of the Act. Mr Smith appealed to the Full Court of the Supreme Court of Western Australia, which upheld the validity of section 54 of the Act in a majority decision.

Mr Smith has applied for special leave to appeal against the judgment in the High Court.

APPENDIX 4

Workers' compensation data covering seafarers covered by the Seacare scheme and those with equivalent entitlements

The tables below provide time-series data on workers' compensation claims by seafarers covered by the Seafarers R&C Act or who have equivalent entitlements.

Table A4.1—Nature of claims

Type of Claim	1996–97	1997–98	1998–99
Time lost	433	342	193
Medical expenses only	77	39	24
Property loss/damage	5	0	3
Permanent impairment	5	0	0
Death	0	0	0
TOTAL	520	381	220

Table A4.2—Claim Rates by Job Classification (No of claims x 100)
population

Work group classification	1996–97	1997–98	1998–99
Deck officers	5.2%	4.5%	2.8%
Engineering officers	6.0%	5.7%	4.8%
Integrated ratings	18.9%	14.9%	8.4%
Catering Department	15.1%	10.6%	8.9%
Trainees ^a	n/a	1.5%	1.0%
TOTAL	12.1%	9.4%	6.2%

^a Total trainee claim rates were not available for 1996–97

Table A4.3—Location of person at time of injury by activity

Location by activity	1996–97	1997–98	1998–99
Working on ship	513	378	215
Working ashore	2	0	1
At training course	2	1	2
Journey to or from ship	3	2	2
TOTAL	520	381	220

Table A4.4—Location of person at time of injury by place

Location by Place	1996–97	1997–98	1998–99
Deck spaces ^a	263	197	93
Machinery spaces	91	56	37
Accommodation block	65	59	35
Other	52	36	33
Galley	36	24	19
Gangway/pilot ladder	12	6	3
Wharf	1	3	0
TOTAL	520	381	220

^a Includes cargo spaces

Table A4.5—Claims by body part

Body Part	1996–97	1997–98	1998–99
Lower limb	123	86	57
Trunk	69	56	24
Back	111	66	35
Upper limb	122	107	62
Head and neck	53	36	17
Upper and lower limbs	2	0	0
Multiple	11	16	9
Psychological system in general	12	8	7
Other	17	6	9
TOTAL	520	381	220

Table A4.6—Mechanism of injury

Mechanism	1996–97	1997–98	1998–99
Body stressing	202	150	71
Falls, trips and slips of a person	127	97	56
Being hit by moving objects	66	51	34
Hitting objects with a part of the body	37	30	21
Mental stress	14	11	6
Sound and pressure	8	2	2
Biological factors	24	9	4
Heat, radiation and electricity	2	3	3
Chemicals and other substances	12	4	3
Other and unspecified mechanisms of injury	28	24	20
TOTAL	520	381	220

Table A4.7—Claims by nature of injury

Nature of Injury	1996–97	1997–98	1998–99
Strains, sprains of joints and adjacent muscles	261	168	100
Fractures (including vertebral)	60	53	28
Contusions	21	8	16
Open wounds	26	25	13
Mental disorders	14	11	9
Hernias	21	15	8
Disorders of muscle tendons and soft tissues	29	34	7
Superficial injuries	10	8	4
Damage to artificial aids	8	1	3
Dislocations	6	7	2
Respiratory diseases	7	6	2
Deafness and other ear diseases	8	3	2
Burns and scalds	1	3	0
Other	48	39	26
TOTAL	520	381	220

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Glossary of Acronyms

- AAT** Administrative Appeals Tribunal
- AGS** Australian Government Solicitor
- AMICA** Australian Maritime Industry Compensation Agency
- AMSA** Australian Maritime Safety Authority
- DEWRSB** Department of Employment, Workplace Relations and Small Business
- CPM** Comparative Performance Monitoring
- EEO** Equal Employment Opportunity