



Australian Government
**Seafarers Safety, Rehabilitation
and Compensation Authority**

2015 Strategic Plan

Seacare 2015 Strategic Plan: Issues Paper



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Introduction

1. The Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) is responsible for administering a set of occupational health and safety and workers' compensation and rehabilitation arrangements for certain defined seafarers (the Seacare scheme).
2. The Seacare Authority is currently developing a strategic plan, the Seacare 2015 Plan, to provide strategic direction to the Seacare scheme and the Authority to 2015.
3. The Seacare 2015 Plan is being developed within the context of the Government's plans to revitalise the Australian maritime industry. The Government's plans have been outlined in a speech by the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, on 1 December 2010¹.
4. On 1 December 2010, the Minister also released a discussion paper for stakeholder consultation, *Reforming Australia's Shipping*, seeking views on aspects of the reform proposals². The discussion paper is seeking views on three areas of the reform package, namely:
 - the regulatory arrangements under the current licence and permit system
 - the changes to the tax provisions, and
 - the maritime workforce development arrangements.
5. A useful summary of the Governments' priorities for the maritime industry was provided by the Minister in a newspaper article on 11 December 2010.³
6. The Seacare Authority's role in protecting the health, safety and welfare of Australian seafarers, providing rehabilitation support when they are harmed and maintaining a sustainable scheme as the maritime industry grows will ensure that the Seacare Authority supports the government's goals for the shipping industry.
7. In developing the Seacare 2015 Plan, the Seacare Authority is seeking the views of scheme stakeholders and other interested parties on a range of issues of relevance to the scheme. The Authority has adopted three broad strategic priorities around which the Seacare 2015 Plan will be developed. The priorities are:
 - Injury prevention – preventing harm in the workplace, keeping workers healthy and safe at work and reducing the number and severity of safety incidents.
 - Injury management and rehabilitation – supporting injured workers and assisting workers in their recovery and return to work.
 - Scheme effectiveness and efficiency – ensuring that the scheme contributes to a sustainable Australian maritime industry by being effective and cost efficient to employers.
8. This paper provides a range of background information on the Seacare scheme and outlines some of the changes currently occurring in the maritime industry. The Paper poses a number of questions for consideration by stakeholders and others. The views obtained as part of this exercise will be considered by the Seacare Authority in the preparation of the Seacare 2015 Plan.

1. The Hon Anthony Albanese MP *The Gillard Government's Plan to Revitalise Australia's Shipping Industry* Speech to Maritime Union of Australia Branch Conference, Sydney, 1 December 2010.

2. Minister for Infrastructure and Transport, *Reforming Australia's Shipping – A Discussion Paper for Stakeholder Consultation*, Canberra, 1 December 2010.

3. Steps to keep our shipping industry afloat, *The Weekend Australian*, 11 December 2011, p.13.

Seacare scheme coverage

9. The Seacare scheme is a national scheme of occupational health and safety (OHS), workers compensation and rehabilitation arrangements which apply to defined seafaring employees and, in relation to OHS, to defined third parties. In 2009-10, the workers' compensation component of the scheme covered 40 employers employing some 6446 seafarers on 290 vessels.
10. The scheme applies to seafarers employed on prescribed ships engaged in trade or commerce:
 - a. between Australia and places outside Australia, or
 - b. between two places outside Australia, or
 - c. among the states, or
 - d. within a territory, between a state and a territory or between two territories.
11. A prescribed ship is a ship to which Part II of the *Navigation Act 1912* (Navigation Act) applies. Part II of the Navigation Act applies to:
 - a. a ship registered in Australia, or
 - b. a ship engaged in the coasting trade, or
 - c. a ship of which the majority of the crew are residents of Australia and which is operated by one of the following: a person who is a resident or has his principal place of business in Australia; a firm that has its principal place of business in Australia; or a company that is incorporated, or has its principal place of business in Australia.
12. While the coverage provisions in relation to occupational health and safety and workers compensation are broadly similar there are some differences. Further details on the coverage provisions of the Seacare scheme are available from the Seacare website.
13. The coverage provisions for the Seacare scheme are complex and not easily understood. Coverage provisions are linked to sections of the Navigation Act. The Navigation Act is currently being rewritten and it is expected that as a result the coverage provisions of the Seacare scheme may be de-linked from the Navigation Act. Consequently the coverage provisions will need to be reviewed and this will provide an opportunity to bring greater clarity and certainty to the jurisdiction of the scheme.

Question: How can the coverage of the Seacare scheme be best defined to bring clarity and certainty to the jurisdiction?

14. The Seacare scheme was established in 1993 following the passage of the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act). The Seafarers Act established the Seacare Authority and the workers' compensation and rehabilitation framework for the scheme. Prior to the Seafarers Act, workers' compensation arrangements for seafarers were covered by the *Seamen's Compensation Act 1911* (Seamen's Act). The Seafarers Act introduced a new system of workers' compensation and rehabilitation to replace the outdated and inadequate provisions of the Seamen's Act.
15. The Seafarers Act had its origins in a review of the policy basis and operations of the Seamen's Act conducted by Professor Harold Luntz in 1988⁴. The terms of reference of the review required Professor Luntz to consider all the aspects of the Seamen's compensation system and the desirability of consistency between the Seamen's compensation arrangements with proposals then being developed for Commonwealth Government employees.
16. Following the Luntz review and consultations between shipowners and maritime unions, the Government introduced the Seafarers Rehabilitation and Compensation Bill into the parliament in 1992. In introducing the Bill the Minister stated that 'The new scheme will combine fair, earnings-related benefits with comprehensive rehabilitation requirements and other measures aimed at getting injured employees restored to health and back to work as quickly as possible. The Bill also restores the former nexus with the workers' compensation legislation applicable to Commonwealth employees.'⁵
17. The occupational health and safety component for the Seacare scheme was established in 1994 following the passage of the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act). The OHS(MI) Act established an occupational health and safety regime for seafarers similar to state and Commonwealth OHS regimes. The OHS(MI) Act contained two key elements. Firstly, it sets out the general duties of care required by all who work on board ships and secondly it establishes a consultative framework for operators and employees to cooperate in developing a safer working environment. The OHS(MI) Act vested regulatory powers in relation to OHS to the Seacare Authority while vesting OHS inspectorate powers with the Australian Maritime Safety Authority (AMSA).
18. In introducing the bill the Minister stated that 'The purpose of this bill is to make the maritime industry a healthier and safer industry to work in. The new OHS arrangements will complement the new seafarers' compensation legislation by addressing the causes of accidents and thus reducing workplace injuries. ... It will bring the maritime industry into line with the modern OHS arrangements applicable in the states and in Commonwealth employment, ensuring a safer working environment for seafarers. This, in turn will further reduce costs to the maritime industry.'⁶

4 *Report Seamen's Compensation Review*, AGPS Canberra 1988

5 Hon Warren Snowden MP, Second Reading Speech, Seafarers Rehabilitation and Compensation Bill 1992, House of Representatives, *Hansard*, 14 October 1992, p.2154.

6 Mr Neil O'Keefe MP, Second Reading Speech, Occupational Health and Safety (Maritime Industry) Bill 1993, *Hansard*, 24 November 1993, p. 3569.

Seacare Authority

19. The Seacare Authority is a Commonwealth statutory authority established under section 103 of the Seafarers Act. The Seacare Authority is comprised of an independent Chairperson, a deputy Chairperson, two employer representatives, two employee representatives and the CEO of AMSA⁷.
20. While the Seacare Authority is established as a separate statutory authority it has no budget and does not employ any staff. Comcare, the Commonwealth OHS and workers' compensation regulator, is required by virtue of s 72A of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to give the Seacare Authority such secretarial and other assistance and make available to the Authority the services of such members of Comcare's staff and other resources as the Authority reasonably requires for the proper performance of its functions or exercise of its powers. Staff of Comcare provide secretarial services to the Authority and perform a number of functions on delegation from the Authority.
21. The Seacare Authority is responsible for administering the following Commonwealth legislation:
 - *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act)
 - *Seafarers Rehabilitation and Compensation Regulations 1993*
 - *Seafarers Rehabilitation and Compensation Levy Act 1992* (Levy Act)
 - *Seafarers Rehabilitation and Compensation Levy Regulations 2002*
 - *Seafarers Rehabilitation and Compensation Levy Collection Act 1992* (Levy Collection Act)
 - *Seafarers Rehabilitation and Compensation Levy Collection Regulations 2002*
 - *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act)
 - *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003*
22. Under the OHS(MI) Act (s9), the Seacare Authority has the following functions:
 - to ensure that the obligations imposed under the OHS(MI) Act and regulations are complied with
 - to advise operators, employees and contractors, either on its own initiative or on being asked, on occupational health and safety matters
 - to collect, interpret and report information relating to occupational health and safety
 - to formulate policies and strategies relating to the occupational health and strategy of employees
 - to accredit occupational health and safety training courses
 - to liaise with other bodies concerned with occupational health and safety
 - to advise the Minister:
 - on the most effective means of giving effect to the objects of the Act
 - on the making of regulations under the Act, and
 - on the approval of codes of practice.

⁷ Current (as at 1 March 2011) members of the Seacare Authority are: Chairperson, Mr David Sterrett (Chair of the Australian Maritime College and former shipping executive); Deputy Chairperson, Mr Paul O'Connor (CEO of Comcare); Employer representatives, Mr Peter Bremner (Partner Strategic Marine Group) and Mr Mal Hearnden (Manager Swire Pacific Ship Management); Employee representatives, Mr Mick Doleman (Deputy National Secretary, Maritime Union of Australia) and Mr John Wydell (Industrial Officer, Australian Maritime Officers Union); AMSA CEO, Mr Graham Peachey. Members (other than the Chairperson and Deputy Chairperson) may appoint a deputy. Current deputies are: Deputy to Mr Bremner, Ms Teresa Hatch (Executive Director, Australian Shipowners Association), Deputy to Mr Hearnden, Mr Tony Caccamo (General Manager Operations, Australian Mines and Metals Association); Deputy to Mr Doleman, Mr Jamie Newlyn (SA Branch Secretary, Maritime Union of Australia); Deputy to Mr Wydell (Mr Martin Byrne (Assistant Federal Secretary, Australian Institute of Marine and Power Engineers); Deputy to Mr Peachey, Mr Mal Larsen (Manager Strategic Relations, AMSA).

23. Under the Seafarers Act (s104), the Seacare Authority has the following functions:

- to monitor the operations of the Act
- to promote high operational standards of claims management and effective rehabilitation procedures by employers
- to co-operate with other bodies or persons with the aim of reducing the incidence of injuries to employees
- to publish material relating to the functions above
- to formulate policies and strategies relating to the occupational health and safety of employees
- to accredit occupational health and safety training courses
- to advise the Minister about anything relating to the Authority's functions and powers and other matters relating to the compensation and rehabilitation of employees.

24. In May 2004, the Seacare Authority adopted a set of Strategic Objectives to provide direction for the Authority's activities for the period 2004-05 to 2009-10. The Strategic Objectives were designed to compliment the Authority's mission statement:

'to take a leading role in minimising the human and financial costs of workplace injury in the Australian maritime industry'

25. The Authority's Strategic Objectives for 2004-05 to 2009-10 were to:

- assist the Australian maritime industry to sustain a significant, continual reduction in the incidence of work related injury and disease, and to avoid work related fatalities
- be an effective regulator for workers' compensation, rehabilitation/RTW and OHS in partnership with the Australian maritime industry, and to be recognised by the industry as effective
- provide access to a viable and attractive national scheme of workers' compensation, rehabilitation and OHS for the Australia maritime industry
- be a source of high quality and authoritative advice on the legislative arrangements for national workers' compensation and OHS for the maritime industry that promotes fair, efficient and effective outcomes for scheme stakeholders
- manage an efficient and effective Seafarers safety Net Fund.

26. In delivering on its statutory functions and obligations the Seacare Authority performs a number of day-to-day activities. These can best be categorised into the following: regulatory, legislative, educational, data reporting and Safety Net Fund management. Details of some of the Seacare Authority activities in each of these areas are given below.

- Regulatory – Ensuring compliance with provisions of legislation by monitoring activities, following up on non-compliance, processing applications for exemptions (S 20A), HSR Training Course accreditation, industry training course approvals and publishing levels of benefits.
- Legislative – Advising Minister on legislative framework, developing regulations and codes, developing policies and procedures for Authority's operations and functions.
- Educational – Publishing material to assist industry fulfil obligations (Claims management, rehabilitation and return to work, Health and safety Representatives), encouraging best practice through Seacare Awards, providing up to date information on Seacare website, advising employees and employers of rights and obligations and publishing an annual report on its activities.
- Data reporting – collecting and publishing data on OHS incidents and claims, reporting data to national data collections and cross matching data to ensure compliance with obligations.
- Safety Net Fund management – collecting levy payments, ensuring compliance with levy requirements, determining claims against the Fund, acquiring actuarial advice on the Fund level and reinsurance policy for Fund.

Seacare Scheme

27. The occupational health and safety and workers' compensation arrangements under the Seacare scheme are broadly similar to arrangements operating in other Commonwealth and state and territory schemes. However, there are a number of scheme design features which present unique challenges to the industry and the Seacare Authority. Some of these design features are outlined below:

- The scheme is Australia's only national industry based workplace health and safety and workers' compensation scheme.
- The small scale of the jurisdiction presents challenges with the requirements for regulatory frameworks (legislation, regulations codes, administrative arrangements) being spread over very few scheme participants.
- The scheme's regulatory model has the Seacare Authority providing regulatory oversight for the scheme but relying on Comcare to assist in performing functions and the OHS Inspectorate function being performed by AMSA.

Question: Can changes be made to the OHS regulatory regime (ie the NOPSA model) to improve workplace health and safety outcomes for seafarers?

- The scheme is privately underwritten by private sector insurance companies. The small number of companies operating in the industry, high claim rates and long tail benefits and low return to work outcomes result in high insurance premiums. The large excesses in some policies are an attempt to reduce insurance costs and represent a de facto form of self-insurance. Unique among federal schemes, the Seacare scheme operates a safety net fund as a nominal insurer in the event of an employer default event.
- Regulatory charges are not met by the participants being regulated. The scheme is unique in the Australian context in that the scheme participants do not pay directly for regulatory administration. Scheme regulatory costs in the case of the Authority's operating costs are met from consolidated revenue and from Comcare and in the case of AMSA's OHS inspectorate costs by AMSA levy payers.
- The scheme's benefits and entitlements regime is based on a no fault concept with access to ongoing incapacity and medical benefits for the life of the claim. This design means that the level of weekly incapacity benefits are maintained at a high rate for the duration of the injury (no aggressive step downs in benefits) and that access to medical benefits is maintained. The reverse of this design is that there is limited access to common law remedies for damages payments and limited legislative provisions for redemptions.

Occupational Health and Safety

28. The occupational health and safety arrangements are based on two broad principles: firstly, establishing general duties of care for employees and third parties and secondly establishing a consultative framework to engage the workforce in Health and Safety matters.
29. Under the OHS(MI) Act, operators have primary responsibility to provide a safe workplace for both employees and contractors. Operators must:
 - take all practicable steps to ensure the health, safety and welfare of employees and contractors
 - provide and maintain safe working environments, including safe plant and systems of work
 - provide safe access to and from the workplace
 - ensure employees' and contractors' safety at work in the use, handling and storage of plant or substances
 - provide employees and contractors with information, training and supervision to enable them to work safely, and
 - take appropriate action to monitor employees' health and safety, maintain records relating to employees' health and safety and provide appropriate medical first aid services for employees.
30. The OHS(MI) Act also imposes duties of care on manufactures of plant and substances, importers of plant and substances, and suppliers, installers and repairers of plant and substances.
31. Employees also have duties in relation to occupational health and safety under the OHS(MI) Act. Employees must take all reasonable steps to comply with the duties impose on them, they must ensure that they do not create or increase a risk to their and others health and safety, they must cooperate with the operator to enable the operator to comply with their obligations and they must use safety equipment provided.
32. Consultative mechanisms under the OHS(MI) Act are established through the creation of Designated Work Groups (DWG) for groupings of employees on board each vessel. Each DWG may be represented on health and safety matters by a health and safety representative (HSR). The OHS(MI) Act also provides for the establishment of Health and Safety Committees (HSC) to be responsible for broader occupational health and safety matters on board the vessel.
33. The OHS(MI) Act provides for the establishment of an inspectorate function performed by the Australian Maritime Safety Authority (AMSA) and a series of penalties for non compliance with the Act and regulations.

Workers' Compensation

34. Workers' compensation arrangements in the Seacare scheme are provided for in the Seafarers Act and regulations. The workers' compensation arrangements for seafarers are broadly similar to those applying to Commonwealth public sector employees and other employees covered by the *Safety Rehabilitation and Compensation Act 1988* (SRC Act). The main differences between the Seafarers Act and the SRC Act are shown in Table 1.

Table 1 Difference between Seafarers Act and SRC Act

	Seafarers Act	SRC Act
Fund type	Private insurers	Central fund
Self-insurance	No	Yes (for certain corporations)
Journey claims	Yes	No
Time limits for determinations	Yes	No
Work contribution to injury	Material degree	Significant degree (substantially more than material)
Exclusionary provisions	As a result of reasonable disciplinary action taken against the employee, or failure to obtain a promotion, transfer or benefit	As a result of reasonable administrative action taken in a reasonable manner
Adjustment mechanism for earnings of former employees	No standard adjustment mechanism	Adjusted by movements in WPI
Funeral benefit amount	\$5,514 at 1 July 2010	\$10,139 at 1 July 2010
Treatment of superannuation for retired employees	Compensation reduced by amount of superannuation contributions	Compensation reduced by 5% of earnings
Interest rate for lump sums	Deemed rate of 10%	Rate set by 10 year Govt Bond Rate (5.38% at 1 July 2010)
Compensation weekly benefits payable after 65	For employers aged 64 and over, max of 52 weeks benefit payable	For employees aged over 63 years, max of 104 weeks benefit payable
Compensation for hearing loss	5% threshold	10% threshold

Question: Do Seacare scheme benefits need to be refreshed to align with benefits available to workers under the Safety, Rehabilitation and Compensation Act?

35. The Seafarers Act establishes a no fault compensation scheme where injured workers have access to defined benefits for incapacity payments and medical treatment for the duration of the injury. Under the Act, employers are required to obtain insurance from an authorised insurer or an approved member of a Protection and Indemnity Association (P&I Club) for the full amount of the employer's workers' compensation liabilities. Employers are responsible for the rehabilitation of injured employees.

36. Employees may be entitled to compensation for:
 - work-related injuries and diseases that result in incapacity for work, permanent impairment or death
 - property loss or damage (to artificial limbs, medical and similar aids and appliances) sustained in employment-related accidents, and
 - reasonable medical expenses incurred as a result of a work-related injury.
37. Benefit levels are adjusted annually to account for inflation.
38. The Seafarers Act provides for claims to be determined by the employer within statutory time frames and a two tier appeal mechanisms for those dissatisfied with determination decisions.
39. Employers must determine claims within the following time periods:
 - 60 days for death
 - 30 days for permanent impairment, and
 - 12 days for incapacity, loss or damage to property or cost of medical treatment.
40. If a claim is not determined within the statutory time period the claim is deemed to have been denied.
41. Employees dissatisfied with an employer's decision in relation to a claim have a right to appeal the decision. The appeal process is at two tiers: firstly to the employer for a reconsideration of the initial decision and secondly to the Administrative Appeals Tribunal to review the reconsideration decision. The Seafarers Act requires employers to seek the assistance of Comcare or an industry panel for advice when considering a reconsideration request. Under the Act, an industry panel is a panel established under an industrial agreement for the purposes of assisting an employer with a reconsideration.
42. The Seacare Authority is unaware of the existence of any industry panels currently operating in the scheme. While the composition of industry panels is not prescribed in the Seafarers Act it is presumed that they would consist of employer and employee representatives and independent experts. As such there may be a role for such panels to play in dispute resolution as well as providing reconsiderations advice.

Question: Is there a role for industry panels to play in reducing the level of claim disputation in the scheme?

43. Currently five authorised insurers provide workers' compensation policies for the Seacare scheme. No P&I Clubs currently provide workers' compensation policies for the scheme.
44. The Seafarers Act also establishes the Seafarers Safety Net Fund to act as the nominal insurer in the event that an employer can no longer meet its workers' compensation liabilities under the Act. The Safety Net Fund takes the place of the employer in default event⁸. The Seacare Authority administers the Safety Net Fund on behalf of the industry. All employers in the scheme contribute to the Safety Net Fund on a per berth basis.
45. A summary of the main features of Commonwealth, state and territory workers' compensation schemes is at Attachment A.

⁸ Section 3 of the Seafarers Act defines a default event as when the employer: becomes bankrupt or insolvent; applies to take the benefit of any law for the relief of insolvents; compounds with the employer's creditors for their benefit; is being wound up; ceases to exist; or no longer engages in trade and commerce in Australia; and the employer is unable to meet the employers' liabilities under the Act.

Performance data

46. This section provides a background to the performance of the Seacare scheme with data on claims trends over the life of the scheme, performance of the scheme against injury reduction targets, comparison of the safety performance of the scheme against other industries, return to work outcomes, claims disputation rates and workers' compensation premium rates.
47. The Seacare scheme came into existence during 1993-94. On 24 June 1993, the compensation and rehabilitation arrangements began while the main provisions relating to occupational health and safety came into operation on 18 July 1994. Historical claims and employment data for the scheme is provided in Table 2.

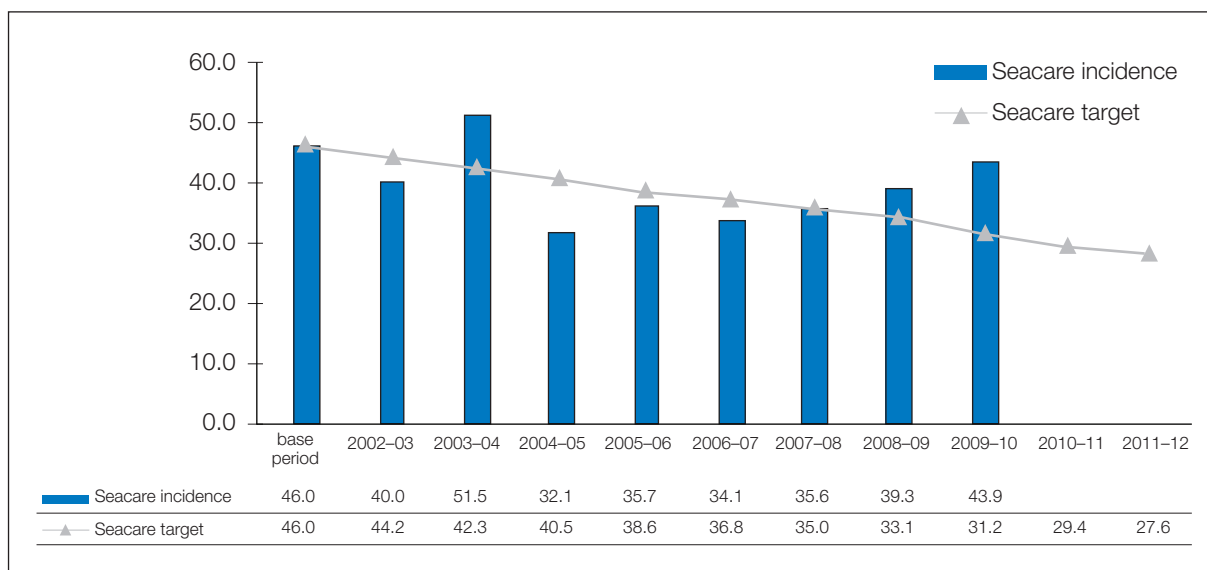
Table 2 Serious Claims and Employees

	Claims (a)	FTE	Employees	Claims per 1000	
				FTE	Employee
1993-94	436		5000		87.2
1994-95	425		4830		88.0
1995-96	545		4570		119.3
1996-97	402		4130		97.3
1997-98	317		4060		78.1
1998-99	186		3530		52.7
1999-00	136		2800		48.6
2000-01	157		2895		54.2
2001-02	124	3000	3152	41.3	39.3
2002-03	127	3173	3355	40.0	37.9
2003-04	167	3241	3933	51.5	42.5
2004-05	111	3459	4260	32.1	26.1
2005-06	131	3670	4912	35.7	26.7
2006-07	121	3544	5690	34.1	21.3
2007-08	149	4185	6105	35.6	24.4
2008-09	184	4682	6255	39.3	29.4
2009-10	197	4490	6380	43.9	30.9

(a) Lost time, permanent impairment and death claims.

48. One of the aims of the Seacare scheme as stated by the Minister in the second reading speech for the OHS(MI) Bill is to make the maritime industry a healthier and safer industry to work in. While data on the number of injuries in the maritime industry before the introduction of the scheme is not available historical data in Table 2 would seem to suggest that the Seacare scheme has been successful in reducing serious injuries since it commenced. For instance, the incidence rate (claims per 1000 employees) for serious injuries for the last five years is 26.7, a dramatic improvement from the rate for the first five years of the operation of the scheme, when the rate was 94.1.
49. However, performance in recent years has not shown the same level of improvement, with claims incidence rates levelling out and in the most recent two years increasing. Although results for individual years should be treated with a degree of caution, the lack of progress in reducing the incidence of workplace injuries in the scheme in recent years is of concern.
50. In May 2002, the National OHS Strategy 2002-12 committed all Australian OHS jurisdictions to achieving reduction targets for workplace fatalities and incidence over a ten-year period.⁹ In November 2002, the Seacare Authority set improvement targets for the Seacare scheme based on the National OHS Strategy targets. The Seacare injury target, measured against the base period of 2000-01 to 2002-03, requires a 40 per cent reduction in the incidence of serious workplace injuries (injuries resulting in lost time, permanent impairment or death) over the period. Progress against the injury reduction target for the Seacare scheme is shown in Chart 1.

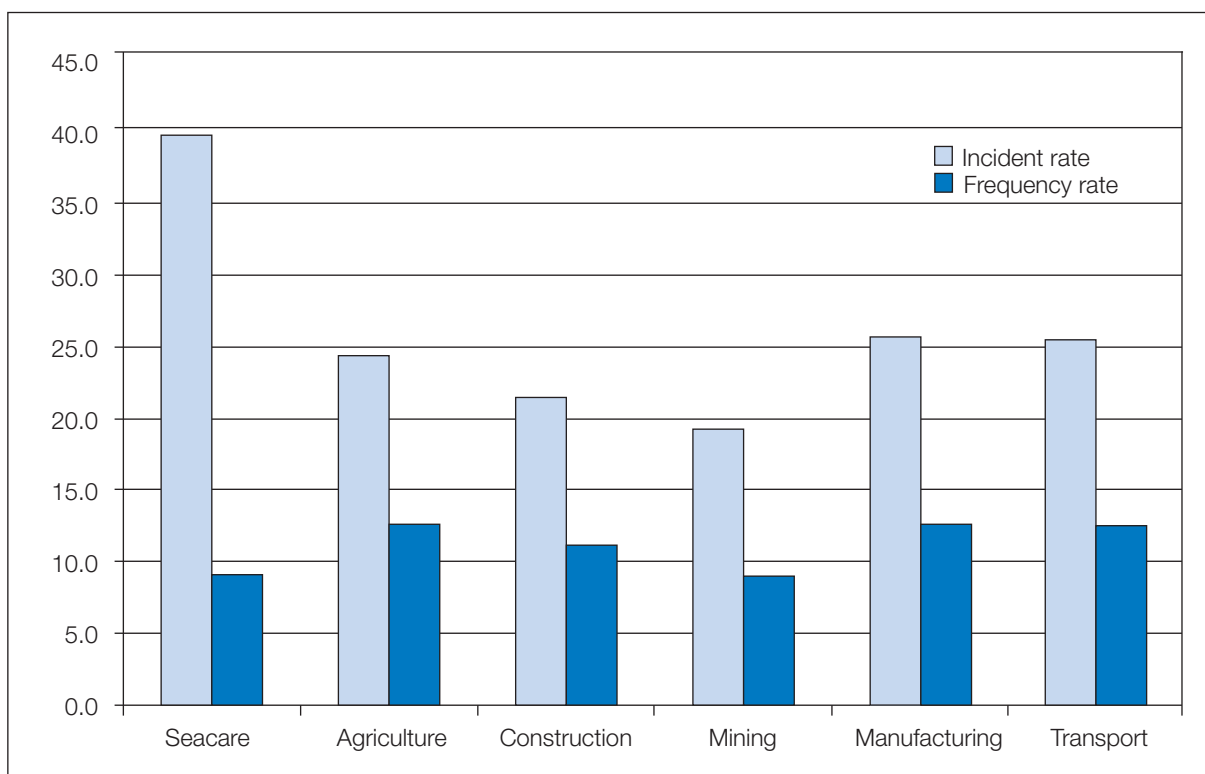
Chart 1 Progress against injury targets



⁹ National Occupational Health and Safety Commission, *National OHS Strategy 2002-12*, NOHSC, Canberra, 2002. http://www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Documents/230/NationalOHSStrategy_2002-2012.pdf

51. Based on a base period rate of 46.0, the Seacare scheme requires an incidence rate of 27.6 by 2011-12 to achieve the 40 per cent reduction target. Data for the last three years shows that the incidence rate for the scheme is above the rate required to achieve the target rate by 2011-12. Latest data for the first six months of the 2010-11 year suggests that there has been a substantial improvement in the Seacare incidence rate and if this trend continues the scheme will be close to achieving the target for the full year.
52. The Seacare scheme operates in a high risk industry. This has been recognised in the National OHS Strategy, with the transport and storage industry being selected as one of the high risk industries selected for priority attention under the strategy. Chart 2 compares the safety performance of the Seacare scheme with other high risk industries.¹⁰ When comparing the performance of the Seacare scheme with other industries it is important to take into account the 24 hour operation of parts of the maritime industry.
53. Chart 2 compares the Incidence and Frequency rates for the industries shown. The Incidence rate relates injuries to the number of employees while the Frequency rate relates the number of injuries to the exposure time or hours at work) of those employees. Thus the Incidence rate shows the number of serious injuries (injuries resulting in lost time, permanent impairment or death) per 1000 employees while the Frequency rate shows the number of serious injuries per million hours worked. Because of the 24 hour operation of certain vessels, the number of hours of exposure to risk in the maritime industry is considerably higher than other industries. The effect of this operation pattern is to lower the injury frequency rate of the maritime industry when compared to other industries. Chart 2 shows that while the Seacare scheme has a high incidence rate compared to other industries, the frequency rate is more comparable.

Chart 2 Industry Comparison 2008-09



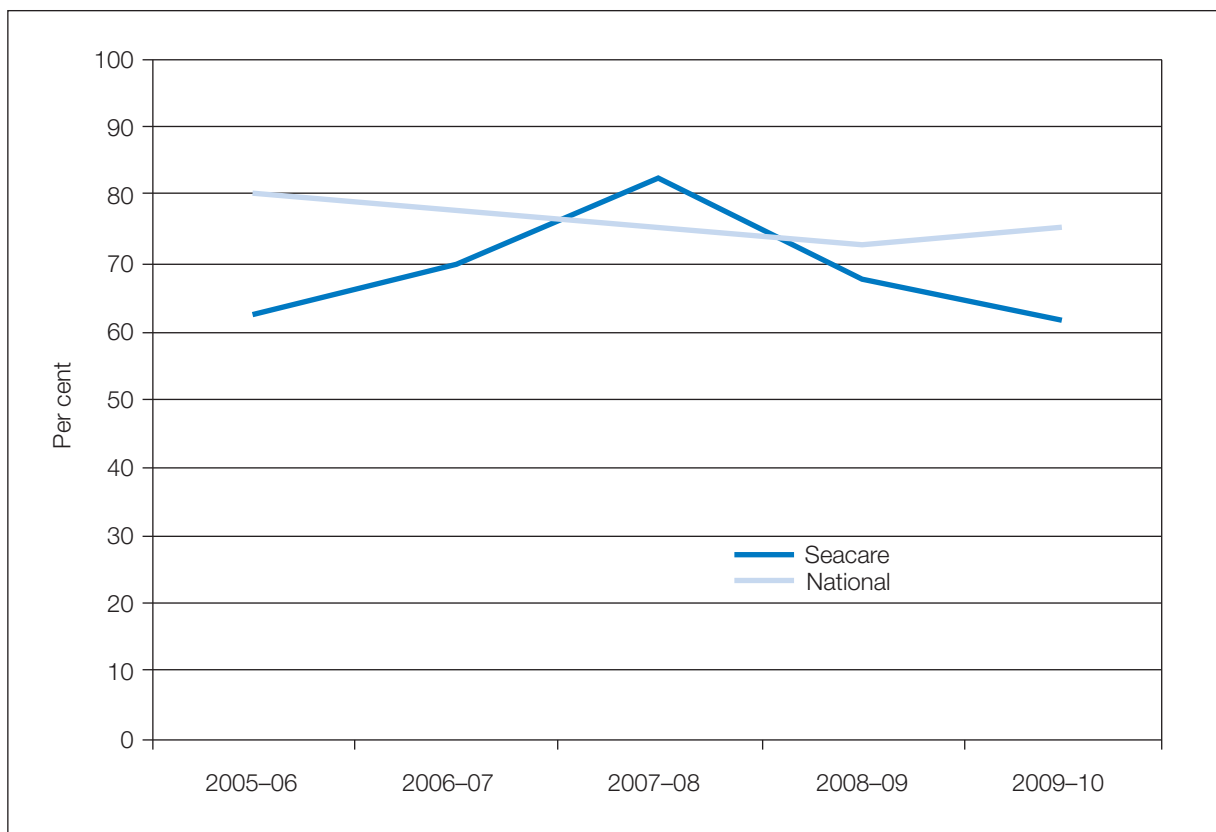
¹⁰ Safe Work Australia, *Compendium of Workers' Compensation Statistics Australia 2008-09*, Safe Work Australia, Canberra 2011. http://www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Documents/570/Compendium_Workers_Compensation_Statistics_2008-09.pdf

Question: How can workplace health and safety for seafarers be improved (enhanced training etc.)?

54. The nature of the maritime industry means that return to work after injury can be difficult. Before returning to work at sea after an injury a seafarer must be certified as medically fit for the duties to be performed. In addition, the seafarer may have to wait for tour of duty to return to sea. This combination of circumstances can result in an increased difficulty in returning to work for the maritime industry than for other industries. Chart 3 compares the durable return to work rate¹¹ of the Seacare scheme with the national average of all Australian workers' compensation schemes.

Question: What can be done to encourage best practice in injury management and rehabilitation and improve return to work outcomes?

Chart 3 Durable RTW rates

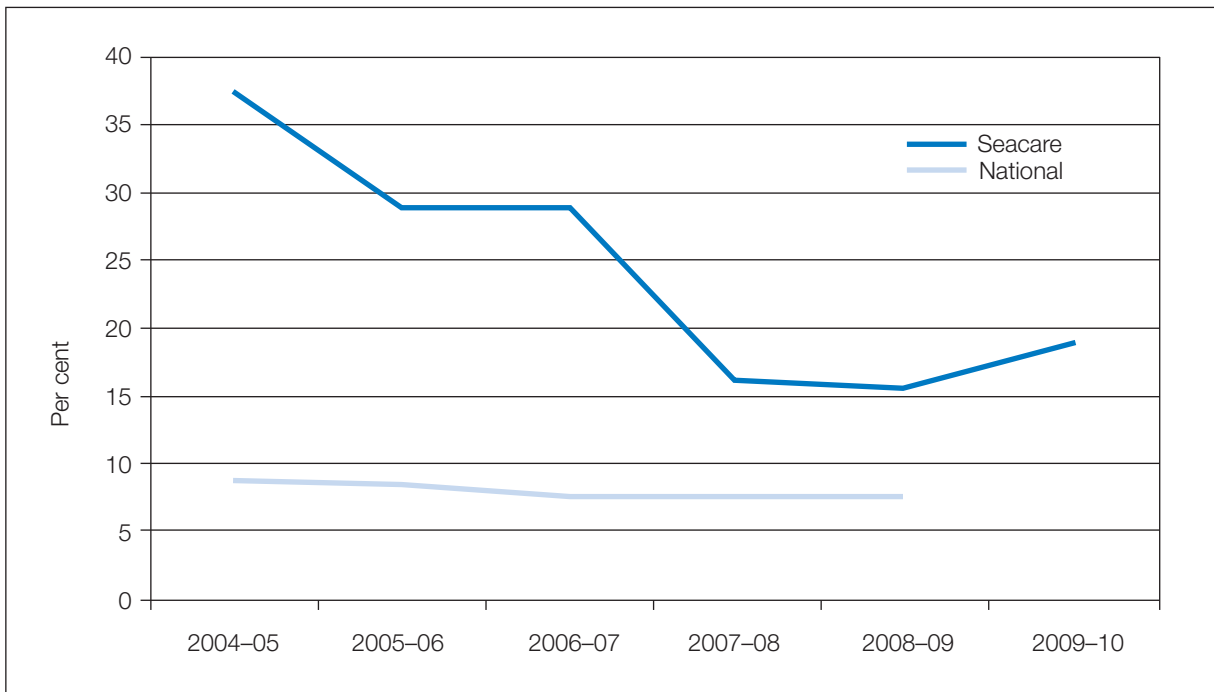


¹¹ Durable return to work is defined as returning to work after an injury and still at work seven to nine months after the injury.

55. The Seacare scheme provides for a two tier appeals process for those dissatisfied with a claims determination decision. The first stage is an internal reconsideration process where the employer reviews their initial decision. The second stage is an appeal to the Administrative Appeals Tribunal (AAT) for a merits review of the decision. The dispute rate for the Seacare scheme measures appeals lodged with the AAT as a percentage of claims received. Chart 4 compares the dispute rate for the Seacare scheme with the National average. While the dispute rate in the Seacare scheme has been decreasing in recent years the rate is still twice the national average.

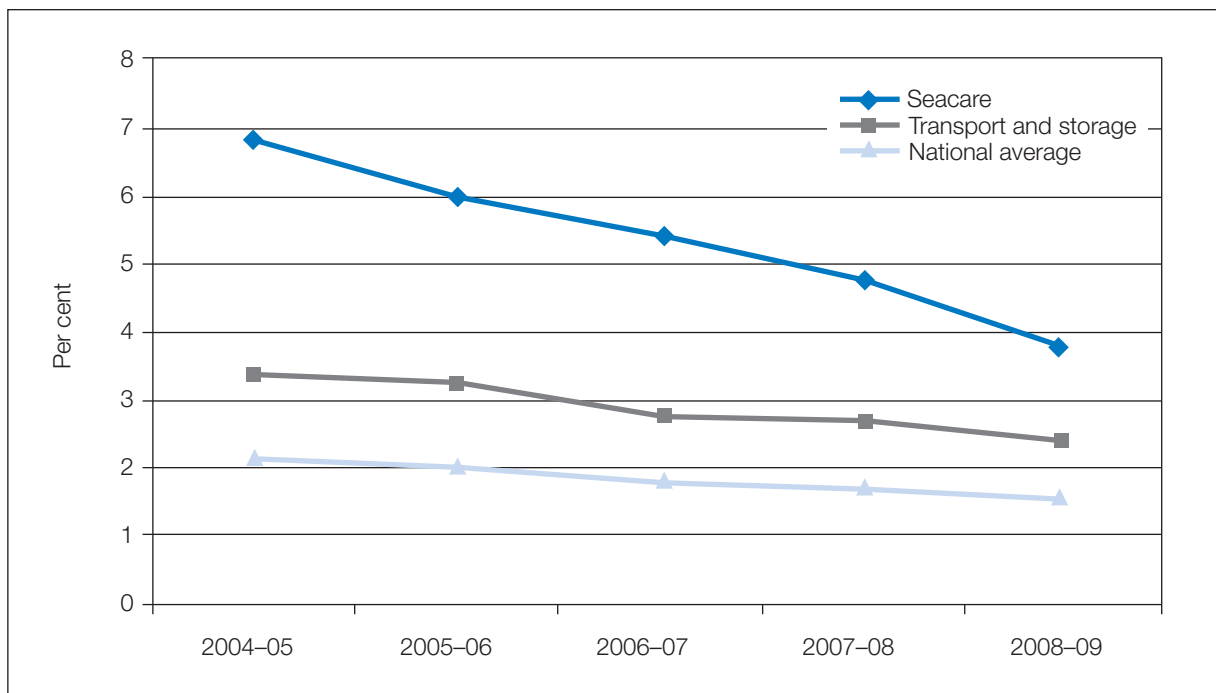
Question: What can be done to reduce dispute in the Seacare scheme?

Chart 4 Disputation rate



56. Workers' compensation premium rates for the Seacare scheme are the highest of any workers' compensation scheme in Australia. Factors contributing to the high rate of premiums include the small number of employers in the scheme, the high claim incidence rate, relatively long tail nature of the scheme and low return to work rates. Chart 5 compares standardised workers' compensation premium rates for the Seacare scheme with the national average for all schemes in Australia and the national rate for the transport and storage industry. Although Seacare scheme premiums have decreased in recent years they are still substantially above the national rate and the rate for the transport and storage industry.

Chart 5 Worker's compensation premiums



Impacts on the Seacare scheme

57. Since the Seacare scheme was established in 1992 there have been substantial changes in the Australian maritime industry.
58. The Australian maritime industry, particularly the coastal and international sectors, has been in decline for some time. Bureau of Infrastructure, Transport and Regional Economics data shows that the number of Australian registered vessels operating in the Australian trading fleet has declined from 79 in 1994 to 47 in 2008-09.¹² Commensurate with the decline in Australian registered vessels operating in the coastal trade has been the increase in foreign registered vessels operating through coastal trading permits.
59. Other developments in the maritime industry over the period since 1992 include:
- reductions in manning levels through greater mechanisation
 - consolidation of operators in the coastal trading sector through corporate takeovers
 - progressive ageing of the maritime labour force as the industry becomes less attractive to younger workers
 - considerable expansion in the number of operators and vessels servicing the offshore oil and gas industry, and
 - change from industry to enterprise employment.
60. The expansion in the offshore sector in recent years has meant that the gradual decline in the number of employees covered by the Seacare scheme up to 1999-2000 has been reversed. The number of employees covered by the scheme in 2009-10 was a record 6380, more than double the numbers covered in the early years of the decade.
61. In addition to changes in the maritime industry in recent years there are a number of changes in the environment in which the scheme operates that are underway. These changes have the potential to impact on the scheme. The changes include:
- coastal shipping reform
 - single maritime safety regulation
 - navigation rewrite process
 - model work health and safety laws
62. Further detail on the various changes and implications for the Seacare scheme are provided in Attachment A.

Question: How can the Seacare Authority contribute to improving the viability of the Australian maritime industry?

¹² Bureau of Infrastructure, Transport and Regional Economics, *Australian Sea Freight 2008-09*, Canberra 2010. http://www.bitre.gov.au/publications/71/Files/Australian_Sea_Freight.pdf

Scheme design considerations

63. As stated above the Seacare scheme operates under a privately underwritten scheme funding model. Under this model a small number of private sector insurance companies provide cover for workers' compensation liabilities to employers in the scheme. Claims management and rehabilitation functions are performed by the employers themselves or contracted out to insurers or specialist providers. Other funding models used in workers' compensation schemes in Australia include centrally funded and hybrid funding models. Details of the various funding models and other characteristics of Australian workers' compensation schemes are shown in Attachment B.
64. Centrally funded schemes operate with a single public sector insurer providing insurance services underwriting the workers' compensation liabilities and centralised claims management services. Hybrid schemes usually operate with a public sector insurer underwriting the scheme and contracting out claims management services to approved agents. Under all three scheme funding models, self-insurance arrangements are possible subject to meeting various prudential and other requirements. There are no self-insurance arrangements possible under the existing Seacare scheme. However, in an attempt to reduce insurance premiums, a number of employers operate with very high claims excesses on their insurance policies thus operating as de facto self-insurers.

Question: Does the existing scheme funding and service delivery model provide the most efficient and effective outcome for employers?

65. Because of the small number of employers in the scheme and the small number of insurers providing insurance and claims services, the scheme suffers from diseconomies of scale and inefficiencies. Alternative funding (centralised funding, self-insurance) and service delivery models (centralised claims management services) may provide an opportunity to improve services to injured seafarers, improve efficiencies and reduce costs to employers in the scheme.

Question: Should other funding and service delivery models (including central funding, self-insurance arrangements, centralised claims management, and P&I Clubs) be explored?

66. The Seacare scheme operates in an industry where insurance arrangements have traditionally been provided through P&I Clubs. The P&I Clubs typically provide cover for all aspects of the vessels operations (hull, cargo, environmental, service and crew protection). Currently no P&I Clubs are willing to provide workers' compensation cover for Seafarers Act benefits, requiring the employer/operator to take out separate workers' compensation cover from private insurers. Operators report that P&I Clubs are unwilling to provide cover due to the long tail nature of incapacity benefits and the limitations on settling claims through cash redemptions under the Seafarers Act. Greater flexibility for cash redemptions and options to purchase annuities with the proceeds may entice P&I Clubs back into the scheme and reduce costs through enhanced competition among insurance providers.

Question: Should other benefit options (cash redemptions, common law) be explored?

Issues for consideration

67. The Seacare Authority is seeking the views of stakeholders and other interested parties to shape the Authority's 2015 Seacare Strategic Plan. The Authority has adopted three broad strategic priorities around which the Seacare 2015 Plan will be developed. The priorities are:
- injury prevention – preventing harm in the workplace, keeping workers healthy and safe at work and reducing the number and severity of safety incidents
 - injury management and rehabilitation – supporting injured workers and assisting workers in their recovery and return to work
 - scheme effectiveness and efficiency – ensuring that the scheme contributes to a sustainable Australian maritime industry by being effective and cost efficient to employers.
68. Within the framework of the of the three strategic priorities, the Seacare Authority is seeking the views of stakeholders on how best to deliver on its statutory charter leading towards 2015. In particular the Seacare Authority is seeking views on the following questions:

Injury Prevention	
Q 1	Can changes be made to the OHS regulatory arrangements (ie NOPSAs model) to improve workplace health and safety outcomes for seafarers?
Q 2	How can workplace health and safety for seafarers be improved (ie enhanced training, etc)?
Injury Management and Rehabilitation	
Q 3	Do Seacare scheme benefits need to be refreshed to align with benefits available to workers under the Safety Rehabilitation and Compensation Act?
Q 4	What can be done to encourage best practice in injury management and rehabilitation and improve return to work outcomes?
Q 5	Is there a role for industry panels to play in reducing the level of claim disputation in the scheme?
Q 6	What can be done to reduce disputation in the Seacare scheme?
Scheme effectiveness and efficiency	
Q 7	How can the Seacare Authority contribute to improving the viability of the Australian maritime industry?
Q 8	Does the existing scheme funding and service delivery model provide the most efficient and effective outcome for employers?
Q 9	Should other funding and service delivery models (including central funding, self-insurance arrangements, centralised claims management, and P&I Clubs) be explored?
Q 10	Should other benefit options (cash redemptions, common law) be explored?

69. Answers to the above questions should be submitted on the Question Response Template provided and forwarded to the Seacare Authority at the address below by 30 April 2011.
70. If you have any questions about this process or wish to discuss any of the issues raised in this paper please contact Gerard Newman, Director and Governance team, Comcare, on phone (02 6275 0061) email: gerard.newman@comcare.gov.au

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Attachment A: Impacts on Seacare Scheme

Coastal Shipping Reform

1. In October 2008, the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government released its report into coastal shipping policy and regulation. The report, *Rebuilding Australia's Coastal Shipping Industry* contained a number of recommendations designed to enhance the competitiveness and sustainability of the coastal shipping sector.¹³
2. On 1 December 2010, the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, released a discussion paper outlining the reforms being proposed by the Government in response to the parliamentary inquiry and an industry advisory group consisting of industry representatives.¹⁴
3. The reforms proposed include:
 - introduction of new tax arrangements to attract greater investment into the maritime industry
 - overhaul of seafarer training and provision of a better deal for Australian seafarers, and
 - modernise domestic maritime laws and make the Australia Maritime Safety Authority the regulator of all commercial vessels operating in Australian waters.
4. Although the reform package does not specifically address seafarer occupational health and safety and workers' compensation issues there are implications for the Seacare scheme in the package. Firstly, an increase in the size of the Australian maritime industry could potentially increase the size of the Seacare scheme jurisdiction and thus increase the viability of the scheme more generally. Secondly, the package is conditional on a compact between industry and unions to deliver productivity and efficiency reforms to better align practices in the Australian shipping industry with international practice. The costs to industry inherent in the Seacare workers' compensation arrangements are relevant to considerations of efficiency and productivity, particularly in relation to injury rates and return to work outcomes.

Single Maritime Safety Regulation

5. In July 2009, the Council of Australian Governments (COAG) agreed to implement national regulation for maritime safety, rail safety and heavy vehicles with an aim to improve safety and reduce costs and regulatory burden to Australia transport companies. Under the COAG agreement all commercial shipping is to be regulated by a single regulatory regime, with the Australian Maritime Safety Authority the national regulator.¹⁵
6. The single regulatory regime is due to be implemented on 1 January 2013. The current intention is for Commonwealth legislation passed in 2011 to allow for enabling state and territory legislation to be passed for implementation on 1 January 2013.

¹³ House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government, *Rebuilding Australia's Coastal Shipping Industry*, Parliament of Australia, Canberra 2008. <http://aph.gov.au/house/committee/itrdlg/coastalshipping/report.htm>

¹⁴ Minister for Infrastructure and Transport, op.cit.

¹⁵ Council of Australian Governments' Meeting, Darwin, 2 July 2009, *Communique*. http://www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/20090702_communique.pdf

7. While there is no intention to use the move to a single maritime safety regulator as a means of expanding the scope and coverage of the Seacare scheme there are nevertheless implications for the scheme.
8. The national safety regulatory regime will be simpler for maritime operators as the same set of requirements will apply throughout Australia. The new arrangements will reduce red tape and lead to efficiencies for operators. The system means that national programs can be developed to improve maritime safety and deliver productivity gains. Improvements in maritime safety more generally directly flow into improvements in occupational health and safety for seafarers and reduced workers' compensation costs for employers.
9. In addition, the creation of AMSA as the single national maritime safety regulator raises the question of responsibility for OHS regulation in the new arrangements. Currently the Seacare Authority is the OHS regulator for the Seacare scheme while AMSA performs the OHS Inspectorate function. This is in contrast to arrangements applying in the offshore oil and gas industry where the safety regulator, the National Offshore Petroleum Safety Authority (NOPSA) is responsible for both facility safety and OHS.

Navigation Act Rewrite

10. On 5 June 2009, the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, announced that the Navigation Act would be rewritten.¹⁶ The rewrite is part of the Government's maritime reform package and aims to modernise the language of the Act to reflect contemporary conditions and to remove unnecessary provisions. Under the proposals the Navigation Act is to be replaced by a Maritime Safety Act.
11. The proposed Maritime Safety Act will:
 - modernise the existing regulatory framework in the Navigation Act
 - introduce the national maritime safety regulator to give effect to the COAG agreement
 - implement the outcomes of a review of penalties to protect the maritime environment, and
 - operate as the primary vehicle for implementing the International Labour Organisations' Maritime Labour Convention.
12. Other reforms that may be included in the new Act include: introduction of modern enforcement powers and penalties, amendments to the definition of 'port' to allow port state control to cover offshore installations, incorporation of the Lighthouses Act 1911 into the new Act, updating wreck and salvage provisions, and clarifying the interface with the Offshore Petroleum and Greenhouse Storage Act 2006 to provide certainty about the handover of responsibilities between AMSA and the National Offshore Petroleum Safety Authority in the case of Floating Production Storage Offloading facilities.
13. A public discussion paper was released on 10 June 2010 providing a detailed overview of the proposed rewrite and seeking stakeholder views on a number of questions.¹⁷ Submissions received as a result of this process have been taken into account in preparing the draft Bill. Current intentions are for the draft Bill to be released for public consultation in 2011 with a view to the having a Bill introduced into the parliament later in 2011.

¹⁶ The Hon Anthony Albanese MP Speech to NATSHIP 2009 Conference, Sydney, 5 June 2009. http://www.minister.infrastructure.gov.au/aa/speeches/2009/AS08_2009.htm

¹⁷ Department of Infrastructure, Transport, Regional Development and Local Government, *Navigation Act Discussion Paper*, Canberra, 2010.

14. As stated earlier in this paper, the coverage provisions of both the Seafarers Act and the OHS(MI) Act are linked to Part II of the Navigation Act. The current intention in the rewrite process is to de-link the coverage provisions from the Navigation Act and have stand alone coverage provisions in the Seafarers Act and OHS(MI) Act. This de-linking process represents an opportunity to bring clarity and certainty to the coverage provisions. The Seacare Authority and the Department of Education, Employment and Workplace Relations will be conducting a separate process in 2011 to explore options to define coverage. This process will involve consultation with Seacare scheme participants and stakeholders.
15. The rewrite of the Navigation Act has a number of implications for the Seacare scheme apart from de-linking of coverage provisions. The Navigation Act contains a number of provisions relating to the employment conditions of seafarers. Of significance are provisions relating to medical attention for seafarers when away from their home port. A number of Seafarers Act workers' compensation insurance policies include insurance cover for this. The interaction between the provision of benefits under the Navigation Act (s127) and the Seafarers Act is not always clear and there is often confusion as to entitlements. The final wording of the employment provisions in the Maritime Safety Act has the potential to impact on the Seafarers Act.

Model Work Health and Safety Laws

16. In July 2008, COAG formally agreed to harmonise the occupational health and safety laws in Australia by signing the Intergovernmental Agreement for Regulating and Operational Reform in Occupational Health and Safety (IGA).¹⁸ The IGA commits the states and territories and the Commonwealth to work together to develop and implement model work health and safety laws by December 2011. The model laws will consist of a model Act supported by model Regulations and Codes of Practice. The model Work Health and Safety Act was agreed to by Workplace Relations Ministers' Council (WRMC) on 11 December 2009.¹⁹
17. Draft model Regulations and Codes of Practice have now been developed and are currently the subject of public consultation process. Legislation to give effect to the model laws in the Commonwealth OHS jurisdiction are expected to be introduced into the parliament during 2011.
18. In committing to the model Workplace Health and Safety (WHS) laws, WRMC agreed that there should be a presumption that separate and specific OHS regimes for particular hazards or high-risk industries (like the OHS(MI) Act) that are within the responsibility of WRMC should only continue where they can be objectively justified. Even where separate OHS laws can be justified they will be required to comply with provisions in the model WHS Act. WRMC has also agreed that the existence of separate OHS regimes will be considered after the model WHS legislation is passed. Given this commitment a review of the OHS(MI) Act within the model WHS Act framework will need to take place during 2011.

¹⁸ Council of Australian Governments, *Intergovernmental Agreement for Regulating and Operational Reform for Occupational Health and Safety*, 3 July 2008. http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/OHS_IGA.pdf

¹⁹ Workplace Relations Ministers' Council, Meeting 84 *Communiqué*, 11 December 2009. <http://www.deewr.gov.au/WorkplaceRelations/WRMC/Documents/11Dec09.pdf>

19. While the OHS(MI) Act and the model WHS Act follow the same general principles of defining duties of care and establishing consultation mechanisms there are a number of significant differences. Some of the main differences are:
- extension of the primary duty of care to the person conducting the business or undertaking
 - extension of definition of employees to all workers
 - extension of workplace to concept of 'at work'
 - extension of duties to officers and designers
 - increase in penalty regime
 - extension of penalty options
 - establishment of work groups from multiple employers
 - increase in number of HSRs from workgroups
 - extension of right to cease work to workers, and
 - provides for union right of entry.
20. The Seacare Authority and the Department of Education, Employment and Workplace Relations will conduct a consultation process with the jurisdiction on the place of the OHS(MI) Act within the model WHS Act framework during 2011. Changes to the OHS laws operating in the maritime industry would be expected to follow this process.

Attachment B: Comparison of Workers' Compensation Arrangements, October 2010

	NSW	Victoria	Queensland	South Australia	WA	Tasmania	NT	ACT	Comcare/Seacare
Funding model	Hybrid	Hybrid	Central fund	Central fund	Private insurers	Private insurers	Private insurers	Private insurers	Comcare: Central fund Seacare: Private insurers
Self-insurers	Yes (67)	Yes (36)	Yes (24)	Yes (66+ Crown)	Yes (27)	Yes (13)	Yes (4+ NT Govt)	Yes (8)	Comcare: Yes (28) Seacare: No
Workers covered	2,998,600	2,258,200	2,159,800	687,800	919,507	258,700	116,900	80,193	Comcare: 371,000 Seacare: 6,500
Journey claims	Yes	No	Yes	No	No	No	No	Yes	Comcare: No Seacare: Yes
Standardised Premium Rates (2008-09)	1.83%	1.38%	1.07%	2.82%	1.14%	1.38%	1.74%	2.13%	Comcare: 0.95% Seacare: 3.86%
Common law	Yes	Yes - limited	Yes	No	Yes	Yes	No	Yes	Yes - limited
Income 0-13 wks (total incapacity)	Award CWWR 100% (excl OT) else 80% AWE	95% of PIAWE Stat max \$1810	1-26wks: amt payable under Award; or (not under award) 85%/NWE or 80% of QOTE	100% AWE	100% (incl allowances max 2 x AWE)	100%	100%	100% AWE	100%
Income 13-52 wks (total incapacity)	13-26 wks - Award CWWR - 100% (excl O/T) else 80% AWE. 27-52 wks - < stat rate (+ pay for dep'd spouse / child) or 90% AWE	75% of PIAWE Stat max \$1810	13-26 wks 90% AWE 26-52 wks 80% AWE	14-26 wks - 100% Award wks. 85% for non-Award wks. 27-52 weeks - 85% (Max 2 x AWE)	85%	14-26 weeks - 100% 27-52 weeks - 75%	14-26 weeks - 100% 27-52 weeks - Pre AWE down to 65% (or less, depending on capacity to earn)	14-45 weeks - 100% 46-52 weeks - 75% After 45 weeks maximum of \$1884	
Income 52-104 wks (total incapacity)	Same as 27-52 wks	75% of PIAWE Stat max \$1810	80% AWE	85% (Max 2 x AWE)	75% (Max 2 x AWE)	75%	Same as 27-52 weeks	75%	
Income 104+ wks (total incapacity)	Same as 27-52 wks.	75% of PIAWE Stat max \$1810	80% AWE subject to work capacity review	85% (+ up to \$50,000 in special circumst's) (Max 2 x AWE)	80%	75%	Same as 27-52 weeks	75%	

Lump Sums – Maximum	\$231,000 (permanent impairment) + \$50,000 (pain and suffering)	\$511,920	\$265,485 (permanent impairment) + \$265,485 (>30% impairment) + \$300,740 (grat. Care)	\$426,255	\$168,499	\$236,850	\$220,147	\$26,622 (Single injury PI) \$189,934 (Multiple injury PI)	\$159,236 + \$59,713 non-economic loss
Limits – medical + hosp.	\$50,000 or > amount prescribed or directed by WCC or approved by the WCA	No limits – benefits cease 52 weeks from cessation of weekly payments	No limit	No limit	\$50,550 + up to \$50,000 in spec circ's, & up to \$250,000 if > 15%.	No limits but entitlements cease after 10 years	No limit	No limit	No limit
Death benefits	\$455,900 + \$115,80 pw for each dependant child	\$511,920 - shared (spouse/ch'n) + 95% PIAWE -max \$1810 pw 13 wks spouse/orphan, 50%PIAWE \$1810pw 156wks Spouse+25% PIAWE shared dep't ch'n (75% for orphans)	\$497,285 + \$13,285 (totally dep. Spouse) + 8% OOTE each dep. child <6 + \$26,560 each dep. child <16 or a student.	\$426,255. A lump sum maybe payable to domestic partner on death of worker.	\$230,992 + \$44,200 pw for child <16 + max of \$50,550 for medical expenses.	\$236,850 + 100%wkly paymt for 13 weeks, 85% wkly paymt to 78 wks, 80% wkly paymt to 2 years for dep. spouse, + \$64.18 pw child <16 or <21 if full time student	\$275,184 + \$105.84 pw for each child (up to max of 10 ch'n)<16yrs	\$189,934 + \$63.31pw each dependant child	\$442,177 + \$121 pw for each dependent child
Funeral benefits (max)	\$9000	\$9300	Reasonable	\$7470	\$8149	Reasonable	\$5504	\$5061	Comcare: \$10,139 Seacare: \$5514
Redemptions / Settlements	Yes	Yes (limited)	Yes	Yes	Yes	Yes	Yes	Yes	Yes (limited)
Disputation Rate (2008-09)	7.0%	15.5%	3.3%	16.7%	3.9%	7.5%	7.7%	n.a.	Comcare: 8.9% Seacare: 15.5%



