



## Purpose of this guide

This guide provides an outline of the workers' compensation process under the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act) for legal practitioners acting for claimants.

## The applicable Workers' Compensation Jurisdiction

In the event that an employee has suffered a work-related injury in the maritime industry and intends to make a claim for workers' compensation, it will be necessary to consider initially which workers' compensation scheme applies.

### Coverage of the Seacare scheme

Pursuant to section 19 of the Seafarers Act, a seafarer will generally fall within the Seacare scheme if they satisfy all three of the following criteria:

- (i) they are an employee;
- (ii) on board a 'prescribed ship'; and
- (iii) the ship is undertaking a voyage either interstate, outside Australia or within a territory for the purpose of trade or commerce.

Section 19 of the Seafarers Act prescribes that coverage of the Seacare scheme also extends to vessels declared under the Navigation Act. Accordingly, a seafarer will also fall within the Seacare scheme on a voyage if they satisfy all three of the following criteria:

- (i) they are an employee;
- (ii) on board a 'prescribed ship'; and
- (iii) the ship is declared under section 8A or section 8AA of the Navigation Act.

Pursuant to Part II of the Navigation Act, a 'prescribed ship' generally means:

- a ship registered in Australia; or
- a ship otherwise registered and engaged in the coasting trade; or
- a ship of which a majority of the crew are Australian residents and which is operated by an Australian company or person

For further information in this regard, please refer to the Guidance Notes on the Coverage of the *Seafarers Rehabilitation and Compensation Act 1992* at [www.seacare.gov.au](http://www.seacare.gov.au).

## Injuries suffered prior to 24 June 1993

The Seafarers Act commenced on 24 June 1993. Section 6 of the *Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992* prescribes that the Seafarers Act applies to injuries prior to 24 June 1993 provided the injury would have been compensable under the *Seaman's Compensation Act 1911* (the Seaman's Act)

Accordingly, if a claimant has suffered an injury prior to 24 June 1993, the injury will be compensable under the Seafarers Act, if it would have been compensable under the provisions of the Seaman's Act.

The Seaman's Act can be accessed at: <http://www.comlaw.gov.au/Details/C2004C06648>.

## Exemptions

If the Seafarers Act applies, an employer may in certain circumstances, seek an exemption from the Seafarers Act with respect to a particular employee, group of employees or all employees on a particular vessel.

If the Seacare Authority grants an exemption, the Seafarers Act will not apply to any of the specified employees on board that vessel.

Details of exemptions granted by the Seacare Authority for each financial year are published in the Authority's Annual Report and are available online at [www.seacare.gov.au](http://www.seacare.gov.au).

## State and Territory workers' compensation

If a seafarer does not satisfy the criteria outlined above, or if they are subject to an exemption, they will not fall within the scope of the Seafarers Act. In this event, a claim for workers' compensation should be made under the appropriate State or Territory workers' compensation scheme.

## Workers' Compensation claims under the Seafarers Act

### Making a claim

Pursuant to sections 24 and 25 of the Seafarers Act, in the Seacare scheme it is an employer's responsibility to determine a claim for workers' compensation and compensate an entitled party.

Accordingly, to make a claim for workers' compensation under the Seafarers Act an employee must submit a completed Seacare claim form and accompanying medical certificate to their employer.

Claim forms are available on the Seacare website at [www.seacare.gov.au/forms](http://www.seacare.gov.au/forms).

### Disputing a claim

The Seafarers Act provides that an employer must determine a workers' compensation claim within the time frames prescribed by Part 5 of the Act. If an employer fails to do so, the claim is deemed to have been rejected.

In the event that an employer does not determine a claim within the prescribed time frame, or if a claimant otherwise disagrees with an employer's decision, the Seafarers Act prescribes a two-tier process of review by which a claimant may dispute an employer's decision.

In this regard, a claimant may initially seek a reconsideration of an employer decision and then, if a claimant disagrees with an employer's reconsideration decision, they may seek an independent review of the claim by the Administrative Appeals Tribunal.

To obtain a reconsideration, a claimant must request a reconsideration of an employer's determination by notice in writing to the employer. A request for reconsideration must set out the reasons for the request and be given to the employer within 30 days after the day on which the determination first came to the claimant's notice.

An employer then has 60 days to reconsider its determination.

### Request for information

Given that it is an employer's responsibility to determine a claim for workers' compensation and compensate an entitled party in the Seacare scheme, the Seacare Authority does not manage any workers' compensation claims under the Seafarers Act or maintain any workers' compensation files.

Accordingly, all requests for documents relating to a claimant's claim under the Seafarers Act should be directed to the relevant employer.

### If the employer no longer exists

Section 4 of the Seafarer Act prescribes that, if a default event occurs in relation to an employer, then an employee is taken to be employed by the Seafarers Safety Net Fund.

Section 3 of the Seafarers Act prescribes that a default event occurs when:

- (a) the employer:
  - (i) becomes bankrupt or insolvent; or
  - (ii) applies to take the benefit of any law for the relief of insolvents; or
  - (iii) compounds with the employer's creditors for their benefit; or
  - (iv) if the employer is a body corporate – is being wound up; or
  - (v) if the employer is a body corporate – ceases to exist; or
  - (vi) no longer engages in trade or commerce in Australia; and
- (b) the employer is unable to meet the employer's liabilities under the Seafarers Act.

In circumstances where a possible default event has occurred in relation to a claimant's employer, a claim for workers' compensation should be submitted to the Seacare Authority as a claim against the Seafarers Safety Net Fund. The Seafarers Safety Net Fund will then determine and manage the claim in place of the claimant's employer.

### Has a default event occurred?

The following considerations are relevant to determining whether or not a default event has occurred in relation to an employer:

- Company succession

Under the *Corporations Act 2001* individuals or companies may form and register a company which becomes a new legal person separate from any other. The company remains the same legal person irrespective of any changes in name and ownership. Despite a name change, a company that continues to engage in trade and commerce and maintains its ACN is the same legal entity.

Therefore, in circumstances where an employer company is acquired or taken over by another entity, a claim for workers' compensation must be submitted to the new owner of the employer company because a default event has not occurred for the purposes of the Seafarers Act.

In this regard, while the Seacare Authority cannot provide any assurances about the accuracy of information, websites such as Flotilla Australia ([www.flotilla-australia.com](http://www.flotilla-australia.com)), the Ships List ([www.theshipslist.com](http://www.theshipslist.com)) and the Australian Securities and Investments Commission ([www.asic.gov.au](http://www.asic.gov.au)) may assist claimants and legal practitioners to track the corporate history of an employer company.

- Insurance arrangements

The second element of a default event for the purposes of the Seafarers Act is that the employer is unable to meet its liabilities under the Act. In this regard, it is the Seacare Authority's position that an employer is able to meet its liabilities under the Seafarers Act where a valid insurance policy exists.

Accordingly, a default event has not occurred where an insurance policy (or coverage under a P&I club) remains that covers an employer's liabilities under the Seafarers Act. This is the case even where an employer has ceased to exist.

In circumstances where an employer has ceased to exist, but is survived by a valid insurance policy or P&I club, a claimant's workers' compensation claim should be submitted to the relevant insurer or P&I club.

## Multiple Employers

In the maritime industry an injury or disease may arise as a result of employment with a number of employers over a period of time. In these circumstances, a claimant must submit a claim for workers' compensation with each employer whose employment materially contributed to the injury.

If a workers' compensation claim is made against multiple employers, a claimant must give notice to each employer of any other employer(s) against whom a claim has been made or whose employment is believed to have materially contributed to the injury.

Section 128 of the Seafarers Act also provides a basis for an employer to recover compensation payments from other employers in circumstances where liability is shared for an injury.

**DISCLAIMER:** This publication is intended to provide only a summary and general guide on the management of Seacare claims. It is not intended to be comprehensive and is not a substitute for reference to the Seafarers Act and independent professional advice. Please contact an appropriately qualified professional before relying on the contents of this publication. The Seacare Authority, Comcare and the Commonwealth and their officers, servants and agents expressly disclaim liability and responsibility with respect to, and accept no responsibility for, the consequences of anything done or omitted to be done in reliance, whether wholly or partly, upon this publication: including but not limited to the results of any action taken on the basis of information in this publication or the accuracy, reliability, currency, or completeness of any material contained in this publication.