Seacare 2015 Strategic Plan

Question response template
Please provide any comments to the questions in the space provided. Any additional comments you may wish to make to assist the development of the 2015 Seacare Strategic Plan may be made at the end of the template. Responses will be published on the Seacare web site unless marked confidential.

Please return completed template to the Seacare Authority at address below by 30 April 2011.

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INJURY PREVENTION

Q1. Can changes be made to the OHS regulatory arrangements (ie NOPSA model) to improve workplace health and safety outcomes for seafarers?

Comments

One of the challenges facing operators and seafarers alike is the interface between OHS jurisdictions. A vessel and its crew may, in any one journey within Australia’s jurisdiction, fall within the AMSA and NOPSA regimes. The question was put on page 6 of the Issues Paper as to how can the coverage of the Seacare scheme be best defined to bring clarity and certainty to the jurisdiction.

Changes that would clarify the obligations of operators and seafarers in all circumstances and ensuring the consistency of obligations, as far as possible, will likely result in better health and safety outcomes for all seafarers.

Ensuring all stakeholders understand where the duty of care falls and against which standards the required duty of care will be measured is essential to ensuring operators and individual seafarers alike are aware of their obligations and work with the appropriate regulatory body to ensure they are met. Identifying clear jurisdictional boundaries will help alleviate any operator or seafarer defensiveness towards the relevant regulatory body.

In addition to clarification of jurisdictional questions, the Occupational Health and Safety (Maritime Industry) Act 1993 (OHSMI Act) is designed to foster consultation within the workplace to develop a safety culture. Within the framework of the legislation exists an obligation to take “all reasonable steps to develop a policy relating to the occupational health and safety of employees. The OHSMI Act then mandates consultation with any involved unions (s12(2)), irrespective of whether this is the desire of the employees at the workplace. While all stakeholders have a keen interest to ensure that a workplace is free from risks to health and safety, the principal beneficiaries are the employer and the employee and a safe workplace is often the joint outcome from co-operation and consultation between the two parties. This is not to say that an employee representative body with appropriate representation should never play a part in contributing to a workplace occupational health and safety outcome and in fact it may be the employer, or employees or both may be comforted by such participation.

The difficulty is that the occupational health and safety outcome can be industrialized if the participation of an employee representative body is mandatory, and this should be avoided at all costs. Consultation rather than disputation is the key to successful OHS outcomes. On this basis the involvement of a third party employee representative body need not be mandatory, but should be envisaged at the request of either the employer or the relevant employees.
Q2. How can workplace health and safety for seafarers be improved (ie enhanced training, etc)?

Comments

Improvements in workplace health and safety may come from a number of different sources. Many operators currently conduct company specific training that incorporates OHS aspects, and such initiatives ought to be encouraged.

If industry is able to isolate deficiencies in core training then this could be addressed through course content at maritime training institutions or the development of short courses, however it is not clear to ASA that there are specific deficiencies that would be rectified by enhanced training.

Support for industry driven safety solutions may also result in improved workplace health and safety. The Seacare Awards provide a public forum for those organisations who are industry leaders in safety innovation. Awards like this provide well deserved recognition to operators who dedicate resources and corporate knowledge to achieving improved safety outcomes. Increasing the profile of these awards even more may encourage others in the industry to buy into the ideas.

Buying into ideas is a two way street. There needs to be greater employee responsibility taken to ensure safety on vessels, whether it is the prompt reporting of incidents or immediate response to directions concerning safety issues and the ability to manage staff to ensure optimal safety conditions. Safety issues should not be industrialized unnecessarily as this will de-value genuine safety issues.

Employers and employees need to foster a culture of support for employees who are committed to making genuine safety improvements.

INJURY MANAGEMENT AND REHABILITATION

Q3. Do Seacare scheme benefits need to be refreshed to align with benefits available to workers under the Safety Rehabilitation Compensation Act?

Comments

Caution needs to be exercised when describing “changes” as “an alignment”. The threshold for obtaining compensation under the Seacare scheme and the long tail times for compensation payments are in excess of community standards meaning the Seacare scheme as it currently exists is unsustainable. Rather than “refreshing” benefits to align with the Safety
Rehabilitation and Compensation Act, which provides benefits to commonwealth public servants, a review of benefits and the thresholds which determine entitlement is essential to ensuring the viability of the scheme.

**Q4. What can be done to encourage best practice in injury management and rehabilitation and improve return to work outcomes?**

**Comments**

Unfortunately the percentage of workers who are able to return to their pre-injury roles after a period of rehabilitation are lower than the community norms, which is due in part to the nature of seafaring and the workplace. The reality is the nature of the workplace (a moving vessel in most cases) is such that employees must be 100% fit to return to work or they pose a safety risk to themselves or others on board.

The Seacare Awards provide recognition for outcomes on a company by company basis, and these awards are well deserved and encourage the reporting of successful outcomes.

A practical suggestion to encourage best practice injury management and rehabilitation to improve return to work outcomes would be for a strengthened information and learning sharing facility, which allows those engaged in the injury management and rehabilitation process to access information about how a successful return to work has come about in the past. An examination of international best practice in the global maritime industry may also provide some assistance, given the relatively small size of the Australian maritime industry. How this might best be achieved would need further consideration.

There may exist further networking opportunities within industry to find shore-based return to work opportunities.

**Q5. Is there a role for industry panels to play in reducing the level of claim disputation in the scheme?**

**Comments**

It is difficult to see how an industry panel might go about reducing the level of disputation, and the Issues Paper makes a presumption of the makeup of such a panel being an employer, employee and independent representative. Given such a panel is convened at the reconsideration stage, it may be impossible to appoint a sufficiently independent industry panel given the relatively low number of stakeholders.

Consideration would also need to be given to the funding and resourcing of such industry panels if they were to be formed for the exclusive purpose of reconsidering claims under the Seacare scheme.
A better approach may be a facility for conciliation prior to an Administrative Appeals Tribunal hearing, a process common across society in a range of other disputed matters, which is discussed further under question 6.

Q6. What can be done to reduce disputation in the Seacare scheme?

Comments

A greater understanding of the thresholds and requirements for eligibility under the Scheme may result in lower levels of disputation within the Scheme. This could be achieved by a more concerted effort by Seacare to raise awareness about the available information (information fact sheets, website, help line etc...). Also, employers should be encouraged to liaise with Seacare once a claim under the scheme is made so that they can accurately make a determination as to an employee’s entitlement.

In addition, in a number of state workers compensation jurisdictions there exists a conciliation dispute service whereby the employer, affected employee and relevant insurer can attend conciliation in the event of a dispute as to whether an employee is entitled to weekly payments of compensation or medical and like expenses. Having an independent conciliator may assist parties in reaching an agreement as to an employee’s entitlement before attending the Administrative Appeals Tribunal.

It is noted that the statistics provided in the Seacare 2009/10 Report indicate a relatively even spread between the number of original decisions upheld and those overturned (or settled) in the AAT.

SCHEME EFFECTIVENESS AND EFFICIENCY

Q7. How can the Seacare Authority contribute to improving the viability of the Australian maritime industry?

Comments

As has been recognised in the Issues Paper, there are relatively few participants in the Seacare scheme and this combined with long tail benefits and low return to work outcomes result in high insurance premiums.

In a no fault regime, the comparatively generous benefits and lower threshold for eligibility has meant than insured employers either pay incredibly high premiums or the ‘excess’ before insurance coverage is triggered is disproportionately high, meaning in effect employers become ‘self insurers’ for many claims for weekly payments or medical and like expenses.
It is recognised that a fair balance needs to be struck between adequate compensation and rehabilitation for workers injured on the job and uninsurable financial liabilities for an employer. At present the financial strain on many employers in the Seacare scheme indicates that this balance has not yet been found. This being the case, the Seacare Authority should be looking to national standards in workers compensation and endeavoring to keep benefits (including percentage of take home pay and duration of compensation) and threshold entitlement questions consistent with community norms. While stakeholders do recognise the unique situation of seafarers and the difficulty they have in returning to their roles at sea, ongoing generous compensation standards well above state based regimes and the global maritime industry standards results in significant costs to a continually dwindling number of participants.

Q8. Does the existing scheme funding and service delivery model provide the most efficient and effective outcome for employers?

Comments

Due to the limited number of participant insurers premiums tend to be disproportionately high, meaning many operators effectively ‘self insure’ their claims up to very high levels.

This is unsustainable for employers in the long term and investigating alternative options should be seen as a high priority of the scheme. Investigation of service delivery options such as suggested by the Issues Paper would also be beneficial, as would the promotion of any advisory services the Authority were able to offer to assist employers with refining their claims management practices.

Q9. Should other funding and service delivery models (including central funding, self-insurance arrangements, centralised claims management, and P&I Clubs) be explored?

Comments

Absolutely. From an employer’s perspective the scheme as it currently operates is unsustainable. Alternative arrangements need to be explored as a matter of priority. Bringing the scheme to a point where the risk (from an insurer’s perspective) is quantifiable will open the market up to other insurers (such as P&I clubs). Encouraging more participant insures will provide employers with a wider variety of choices and options and such competition
would likely improve services while maintaining premiums at competitive levels.

Q10. Should other benefit options (cash redemptions, common law) be explored?

Comments

Absolutely. The ability of employers to have some level of certainty with respect to liabilities is critical to business planning. This will also suit an individual employee in some circumstances, and agreed outcomes between employee and employer should be encouraged.

With respect to common law benefit options, these remedies are far more adversarial and fault based so if this were an option that was to be explored, the Authority should be mindful of this. It may be that costs would further increase as a result of strenuously defended litigation, resulting in even higher premiums.

ADDITIONAL COMMENTS

Please provide any additional comments you may wish to make to assist the development of the 2015 Seacare Strategic Plan

Comments

Australian vessel operators operate within the confines of the Australian regulatory regime in almost every way. One of the most glaring exceptions to this is the Seacare regime, which as stated in the 2015 Strategic Plan Issues Paper under paragraph 27 is Australia's only national industry based workplace health and safety and worker's compensation scheme.

Given the relative size of the industry, and the very few participants, many operators argue that it is unsustainable financially to retain the current schedule of benefits and the relatively lower threshold for entitlement (see Table 1 under paragraph 34 of the Issues Paper).

While unquestionably employers are committed to providing safe workplaces and rehabilitation to employees injured at work, the Scheme as presently enacted poses an uninsurable risk imposing significant financial costs on employers. A re-evaluation of the scheme to consider its alignment with the benefits and obligations imposed by State and Territory workers compensation regimes, which are presently acceptable to the majority of the Australian workforce, needs to be considered.